

CARE AND CUSTODY
OF THE MENTALLY ILL,
INCOMPETENT, AND DISABLED
IN MEDIEVAL ENGLAND

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CARE AND CUSTODY
OF THE MENTALLY ILL,
INCOMPETENT, AND DISABLED
IN MEDIEVAL ENGLAND

by

Wendy J. Turner



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Wendy J. Turner
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INTRODUCTION

4 November 1259 — Whereas Geoffrey Luterel, who married the daughter of William de Grey labours under insanity (*insana laborat*), so that he is not sufficient for the rule of his lands and goods, the king, in compassion, has committed his lands and goods to the said William, to keep to the use of the said Geoffrey his children and household out of the issues.¹

4 March 1266 — Whereas Geoffrey Luterel labours under such infirmity that he is incompetent for the rule of himself (*infirmirate laboret quod nec adregimen sui*) and his lands, the king, at the instance of his relatives and friends and for the benefit of his children lest by his fatuity he dissipate his goods and alien [alienate] his land, has ordained that Alexander Luterel, his brother, shall have the care and keeping of his body and William de Grey, whose daughter the said Geoffrey married, the ward of the children.²

10 November 1269 — Whereas the king committed to Alexander Luterel [...] and to William de Grey the keeping of the children of Geoffrey Luterel of unsound mind (*quod Gibertus Luterel non bene compos mentis sue*) and the said Alexander, who has had the sole guardianship since the death of the said William, has not exercised his office satisfactorily [...]. [The guardianship is now] committed to Robert Luterel, son and heir of the said Alexander.³

Geoffrey Luterel had become disabled with a possible intermittent mental condition, meaning that he was ‘disabled’ in that he could no longer care for himself. His affliction at times seems to be only an impairment, to use a physical description of his mental condition. Modern scholars might label him mentally incapacitated, rather than simply incompetent. Medieval officials used a variety of terms to describe his condition: ‘insanity’, ‘infirmity’,

¹ Kew, TNA PRO, C 66/74, membr. 14, and *CPR: Henry III*, v: 1258–1266 (1910), 58.

² Kew, TNA PRO, C 66/84, membr. 25, and *CPR: Henry III*, v: 1258–1266, 564.

³ Kew, TNA PRO, C 66/88, membr. 27, and *CPR: Henry III*, vi: 1266–1272 (1913), 392.

and ‘of unsound mind’. Geoffrey was married and had done so either before the onset of his condition or during a lucid period of time after onset. He had multiple children and other family members living nearby. His father-in-law, William Grey, became the guardian of his children, and Geoffrey’s brother, Alexander, took control of the family estate. When William died, Alexander became the guardian of the children on top of his already caring for the estate and his own household. When he grew too old to keep up the work to the satisfaction of the king, William’s son, and later Alexander’s as well, became the guardians of Geoffrey and his estate and family. But what ailed Geoffrey? Was he *non compos mentis* or *insanus* or a person with no sense of reality? Could he be all of these things?

The administrative personnel that investigated persons with mental conditions were not medical experts and yet they had some sense of what they were seeing. They did *not* label Geoffrey a *furiosus*, which might have indicated that he tended to be violent — on the contrary, they stuck with the far more neutral terms of *insanus* or *non compos mentis* or a general description of his state. This administrative arm of the crown made certain that each guardian knew his task, and when they began to have trouble, others were put in place. The king and his officials — justices, sheriffs, escheators — protected Geoffrey and his property, placing him, his family, and his property into the guardianship of family members.

This study is about people living in medieval England like Geoffrey with mental conditions and in large part it investigates persons with afflictions that have become disabled, meaning that because of their mental incapacity, these persons have lost their ability to be independent in society, that they need assistance in order to fulfil their obligations or survive, and that they can no longer work. They either have committed crimes in their derangement or they have begun to neglect their property and family, and, in either case, society has deemed them unable to conduct business or oversee their own responsibilities without care. Some have murdered loved ones or neighbours; others have become comatose and unresponsive. Some of these people could not understand the world around them; others cannot remember the names of their children. Some became violent, lashing out at those trying to help them. A few had intellectual difficulties. All of them had mental or emotional afflictions that brought them in contact with an arm of the crown, either legal or administrative.

My hope is that this study begins a new discussion about reframing the paradigm from simple examinations of populations as ‘fringe’ or ‘core’ to a new consideration of communities as holistic entities with an ebb and flow among the contributing and non-contributing elements as people live, grow, age, get

sick, become well, have children, break bones, or live with mental impairments or disabilities. The terms suggested by Irina Metzler⁴ of impaired and disabled will not always work cleanly for the complex nature of mental conditions. Those medieval persons who might be labelled as ‘impaired’ were called *idiotia*, *fatuus*, or *non compos mentis* (idiotic, fatuous, or incompetent) in the Middle Ages.⁵ Throughout this study, the term ‘incompetent’ serves to distinguish these persons with mental difficulties, which were sometimes frustrating but not disabling, from other persons with mental illnesses or disabilities. The term ‘mental illness’ in the present work has been limited to two groups: those individuals with diseases recognized by the medieval medical community as mental illnesses (such as mania), and those persons with some form of derangement while sick (such as a high fever).⁶ The general term ‘incapacitated’, a modern word, is used as an overarching term for all persons mentally disabled (those needing physical or legal care), mentally incompetent, and mentally ill.⁷

Using this terminology, in earlier years Geoffrey Luterel must have been sane or have had a mental incapacity with periods of lucidity or have been mentally incompetent but not to the point that he could not fulfil his obligations. He married, and later his condition worsened at which time he became disabled by his affliction and the crown stepped in to provide assistance for

⁴ Metzler, *Disability in Medieval Europe*.

⁵ McDonagh, *Idiocy*, defines the fourteenth-century term *idiotia* as ‘a private man’, but goes on to make a distinction between a person who lives and operates publicly, holding office and responsibilities, as opposed to someone only living as a peasant — by which I understand him to mean ‘serf’ — unable to hold office or real property (p. 6). I also find important his point that nineteenth-century ‘idiots’ were not the same category of persons as the medieval *idiotia*.

⁶ Mental illness is, of course, a modern term and a medical category in Western society. Although I often have consulted the *DSM-iv* in my research, I have tried to be quite careful to use medieval terminology with modern explanations of what those terms meant in the Middle Ages. Mental illness was not defined or even framed in the same way it would be in the twenty-first century.

⁷ Brooks, ‘Official Madness’, addresses the issue of terminology and ‘involuntary confinement’ as well. He states that ‘Early involuntary commitment laws did not define mental illness, due perhaps to the underdeveloped state of psychiatric classification systems’ (p. 14), with which I might disagree in part to say that medieval English involuntary commitment laws *did* define mental illness, though not in a modern sense and without the rigour of later psychiatric evaluation. However, I agree with and have adopted Brooks’s definition of the ‘mentally disabled’, and his understanding that ‘Involuntary commitment laws usually contain two components, first that the person in question be diagnosed with a “mental illness”, and second that they [*sic*] either: (a) pose a danger to themselves or others, (b) are in need of treatment, or (c) cannot see to their basic necessities of life’ (p. 9).

his family in the form of guardians over Geoffrey, his children, and his property. At one time, Geoffrey had been a contributing member of society, not in the least disabled even if he had some form of mental condition. In time, he became disabled, needing assistance with his family and property. Ebb and flow. Geoffrey probably did not return to health, but others with mental incapacities did vacillate between times of disability and the need for constant assistance — a guardian or keeper — and other times without this need, returning to participating fully in society.

One of the main themes of this book is the social understanding and treatment of the mentally incapacitated in late medieval England. Though medicine and law are discussed as part of the social dynamic, this book does not take these areas up as central. The theme of this study is that no matter how medieval stories stereotyped the mad — most often as sinners or innocents — English society treated and cared for the mentally incapacitated on a person-by-person basis. The mentally incapacitated were not lumped into one category, and they were not ignored or sent away; in contrast, the English administration and public had many categories and terms for mental conditions, cognitive abilities, and levels of physicality (violence) associated with mental impairments and disabilities. Also, society had safeguards and assistants (keepers, custodians, guardians) in place to help mentally impaired persons in life. Abuse was not uncommon, and the English crown voiced concerns about it; those abusive of mentally incapacitated persons or their properties were punished if caught.

Medieval English society responded to violence by mentally incapacitated persons, but not in kind; rather, they restrained or incarcerated the guilty party, while at the same time dismissing his sentence. Rather than loss of limb or life, he was locked up until well and pardoned. When a mentally incompetent person was a landholder, society also responded to misuse or neglect of land by finding the individual a guardian. The guardian would care for the person and his property until he was well or until he died. In this way, the land stayed in production for the community and the heir of the mentally disabled person would inherit the property intact.

In this work, the care and custody of the mentally disabled is examined from approximately 1200 to 1500, since sometime in the first half of the thirteen century, Henry III claimed all mentally disabled (not his terminology; see Chapter Two) landholders to be wards of the crown. This study investigates English social attitudes toward mental impairment, privileges granted mentally ill criminals, and legal and administrative challenges in dealing with mentally disabled persons and abuse by their guardians. Case studies, such as the illustration of Geoffrey Luterel, underscore the book's rationale, providing evidence

and illuminating the medieval English social understanding of mental conditions and the treatment of mentally incapacitated persons. While this research focuses on social treatment, care, and custody of the mentally incapacitated, it also engages and acknowledges literary, medical, legal, and ecclesiastic sources and studies. It is grounded in archival research.

In medieval England at the time of an inheritance, after a crime was committed, or in a few other circumstances, a determination might be needed as to the soundness of an individual's mental health. The king or his official questioned the person to ascertain his soundness of mind and emotional stability. He or she was asked to perform simple tasks, to answer questions or to describe things with which he or she should be familiar. 'Counting money, measuring cloth and doing all other things',⁸ such as stating his name or the names of his parents and children, describing his village or the courtroom, gave the questioners indications as to the person's level of competency. Some of those questioned were sent home; some were rechecked periodically; some became wards of the crown.

In the case of a crime — it depended greatly on the type of crime and whether the person was still afflicted or not — if the mentally incapacitated criminal had recovered, he might be questioned as to his memory of events, and if not, he would be left in the care of a 'keeper' or 'custodian' to recover. Some were locked up in gaol. Others, if well, were released. A few went on pilgrimage later — one might imagine, as some type of atonement. In every case, it was preservation of the land and community that was most important to the king, and he worked to do so without punishing those innocent of intent even though guilty of a crime.

Terminology

Throughout this work many terms are used to describe those persons with mental afflictions, as mentioned above. Most are medieval terms and, where possible, those are preferred. The main division for medieval *physical* disabilities currently employed by most medieval scholars was put forward by Irina Metzler in her seminal work on medieval disability studies, *Disability in Medieval Europe: Thinking about Physical Impairment during the High Middle Ages, c. 1100–1400*. Her division is similar to, but not quite the same as, the division employed here to refer to persons with mental conditions. I have divided them

⁸ Kew, TNA PRO, C 135/63, membrane (hereafter membr.) 8v.

between the mentally disabled, the mentally ill, and the mentally incompetent. Some scholars have suggested that this trifold division is cumbersome and that the mentally disabled and ill are the same category. Yet, that seems to be a modern interpretation. The mentally disabled and ill are similar in that both groups need care, yet conditions listed in medieval medical works were not always the same conditions cited in administrative records, or the same as modern mental illnesses. For this study, those persons referred to as ‘mentally ill’ would be either sick persons with some sort of mental break in conjunction with an illness, or those with conditions commonly found in medieval medical writings. Within this work, those persons referred to as having a mental disability were non-functioning in society, quite literally without ability, and I include as disabled those persons who have had their participatory abilities taken away. Even if they were no longer mentally incapacitated, some people were socially disabled by the very fact that they could not control their own property, represent themselves at court, or make legal contracts. Mentally incompetent persons, I occasionally refer to as impaired, for they did have mental impairments to one degree or other in intellectual or emotional capacity, and yet that impairment did not keep them from participating, at least somewhat, in society.⁹ Those with mental impairments quite often escaped the records because they *were* functioning to some degree. A few show up in royal records, questioned as to their competence or memory, but most lived life in obscurity.

‘Mental incapacity’ is used here to designate a general category that includes the mentally disabled, ill, and impaired. Because the administrators did not use the terms ‘disabled’ or ‘impaired’, upon occasion the state of the person is unclear with regard to any categories. In those cases — especially when a normally healthy person becomes sick and commits a crime while deranged — the term ‘incapacitated’ can be useful. For example, the person in question might be incapable of discernment of a situation at the time of a crime and to explain his or her condition, as mental incapacity is helpful. Another term, similarly used, is ‘mental affliction’; this is a general term to describe both disability and impairment of the mind. Both of these terms are modern, though something like ‘affliction’ came into use during the late medieval period (for instance, *dolor* is one Latin word that comes to indicate a mental affliction in some contexts.)

The phrase ‘mentally incompetent’ is used for those medieval persons labelled *idiota* or *fatuus* or *non compos mentis*, as described above, and in particular when a combination of these terms is used. In that case, the officials were

⁹ Goodey, *A History of Intelligence and ‘Intellectual Disability’*, pp. 126, 141–42.

not confused but trying to indicate that the person had multiple symptoms — he or she could not think clearly *and* could not remember, for example. To be incompetent covers both of those concepts without having to reference long combinations of medieval terms; though, the medieval terms are included parenthetically whenever clarity would not be lost to do so.

Depending on the individual's condition, other terms to describe a mental impairment might be appropriate in medieval manuscripts. An ageing and now impaired person might be referred to in the manuscript as *non compos mentis* and old (over sixty) and 'without good memory' and 'not understanding right from wrong'. I might condense that in subsequent references to the person, after having given the Latin and the translation, as to he or she being 'mentally feeble' or 'feeble-minded'. Other individuals — such as infirm persons that have either medically recognized mental illnesses¹⁰ or medical conditions that caused mental ailments — might be referred to here as both mentally ill and impaired or disabled, depending on the severity and duration of the condition. When possible, the medical illness or condition will be included. In every case, I have striven for clarity without sacrificing accuracy.

Context of Scholarship

Much of the research on the history of madness¹¹ in the twentieth century relied on literary images of the mentally ill, incompetent, and disabled, as well as speculation as the foundation for discussion of treatment and understanding of the mentally impaired in the Middle Ages.¹² Like Michel Foucault,¹³

¹⁰ By which I mean that contemporaries would have medically recognized the condition, and not necessarily physicians today.

¹¹ There is an overview of much of this scholarship in the introduction to *Madness in Medieval Law and Custom*, ed. by Turner.

¹² Covey, *Social Perceptions of People with Disabilities in History*, pp. 131–38. See p. 6 for Covey's statements on blindness and mental illness as 'romanticized', in contrast with physical disabilities in early eras. Also 'presentist' in scholarship: Carlson, 'Historicism and the *in medium sordes*'; Gossman, *Medievalism and the Ideologies of the Enlightenment*; Masters, *Bedlam*, writes that the 'mediaeval period was confused by the threat of the ever brooding "present" of the dark forces' and that in the thirteenth and fourteenth centuries mental health was 'entirely' in the hands of theologians and a few physicians (p. 26); Tuke, *Chapters in the History of the Insane in the British Isles*, who writes of the 'quaint prescriptions' for madness in the Middle Ages; and Zilboorg, *A History of Medical Psychology*.

¹³ Foucault, *Madness and Civilization*, trans. by Howard.

these authors do not discuss historic persons, their impairments, or the legal and administrative institutions that cared for the disabled. Other recent scholars have begun to think about the mentally incapacitated anew. As this study reveals, most mentally impaired adults took a moderately active role in mainstream medieval society and, beginning with the thirteenth century in England, the disabled received special legal attention and care.¹⁴ And, throughout nearly all of English history, those committing crimes were not found automatically innocent, but rather guilty without severe corporeal punishment.

It would be possible to study the mentally incapacitated from a variety of viewpoints: literature,¹⁵ medicine,¹⁶ law,¹⁷ or the church.¹⁸ I have chosen to focus on social understanding, while acknowledging these other categories of scholarship and augmenting my own work with information from these areas of study. Though there is little in the way of comprehensive studies in any of these areas on madness *per se*, some scholars have included the mentally ill or impaired among other subjects of study, such as poverty and care studies,¹⁹

¹⁴ There has been much discussion over the date of the beginning of the institution of royal wardship of the mentally incapacitated, beginning in the late nineteenth century up to and including my own work in my dissertation where I thought I knew the date. Still, the date remains illusive. Every time I believe that I have found *the earliest* case of royal guardianship, I find another earlier case. Some of these early cases are royal guardians of the crown's demesne lands, rather than other lands. I plan to sort this out in a later study.

¹⁵ These authors focus on literary examples and not historic persons. They are using the character of the insane person as a way to discover the social attitude toward the mentally impaired. For example: Flanagan, 'Heresy, Madness, and Possession in the High Middle Ages'; Harper, *Insanity, Individuals, and Society*; and Huot, *Madness in Medieval French Literature*. See also: Caciola, 'Mystics, Demoniacs, and the Physiology of Spirit Possession'; and Sprunger, 'Depicting the Insane'.

¹⁶ Jackson, *Melancholia and Depression*, and Jackson, 'Unusual Mental States in Medieval Europe'. Kroll, 'Sin and Mental Illness in the Middle Ages'; Nutton, 'Medicine in Medieval Western Europe'; Rawcliffe, *Medicine and Society in Later Medieval England*; Rosen, 'The Mentally Ill and the Community'; Siraisi, *Medieval and Early Renaissance Medicine*; and Thiher, *Revels in Madness*.

¹⁷ See: *Madness in Medieval Law and Custom*, ed. by Turner. See also: McGlynn, 'Idiots, Lunatics, and the Royal Prerogative'; Pfau, 'Madness in the Realm'; Pfau, 'Protecting or Restraining?'; and Pfau, 'Crimes of Passion'; Roffe, 'Perceptions of Insanity in Medieval England'; Roffe and Roffe, 'Madness and Care in the Community'; Turner, 'Town and Country'; and Turner, 'Defining Mental Afflictions'.

¹⁸ Doob, *Nebuchadnezzar's Children*; King, 'The Mysterious Case of the "Mad" Rector of Bletchington'; Neaman, *Suggestion of the Devil*; and Pickett, *Mental Affliction and Church Law*.

¹⁹ Barr, *The Pastoral Care of Women*; Neugebauer, 'Mental Handicap in Medieval and Early

emotion issues,²⁰ criminal actions,²¹ and shame and sin culture.²²

One of the best works on the mentally impaired in a legal and social context in recent years is H. H. Beek's *Waanszin in de middeleeuwen: Beeld van de gestoorde en bemoeininis met de zieke* (*Madness in the Middle Ages: The Vision of the 'Disturbed' and Involvement with the Sick*) (1969).²³ Beek examines the mentally impaired within medieval Dutch society. Other works that have influenced and shaped this volume's research include: Penelope Reed Doob, *Nebuchadnezzar's Children* (1974); Judith S. Neaman, *Suggestion of the Devil* (1975); R. Colin Pickett, *Mental Affliction and Church Law* (1952);²⁴ Richard Neugebauer, 'Treatment of the Mentally Ill in Medieval and Early Modern England' (1978);²⁵ and Donald W. Sutherland, 'Peytevin v. La Lynde' (1967).²⁶

The research closest to my own is that of Basil Clarke, *Mental Disorder in Earlier Britain: Exploratory Studies* (1975).²⁷ As Clarke's title suggests, he is exploring. He discusses saints' lives, law, treatment, medicine, and social standing — all in brief with few examples. Much of his work is sound, just not fleshed out. He discusses Henry VI but only in so far as he was mad. He quotes the interesting passages of the *Lacnunga* without context. Yet, Clarke's study is a good one and well worth reading as a general overview of the topic.

Modern England'; Roffe and Roffe, 'Madness and Care in the Community'; Turner, "Afflicted with Insanity"; and Walker, 'Widow and Ward'.

²⁰ *Anger's Past*, ed. by Rosenwein, and *Emotions in the Heart of the City*, ed. by Lecuppre-Desjardin and Van Bruaene. Also on emotion, see: Knuuttila, *Emotions in Ancient and Medieval Philosophy*; Rosenwein, 'Worrying about Emotions in History'; Smail, *The Consumption of Justice*; and Sorabji, *Emotion and Peace of Mind*.

²¹ Butler, *The Language of Abuse*, and Butler, 'Degrees of Culpability'; Pfau, 'Protecting or Restraining?'; and Pfau, 'Madness in the Realm'; and Gauvard, *De Grace spécial*.

²² Kroll, 'Sin and Mental Illness in the Middle Ages'; Kroll and Bachrach, *The Mystic Mind*; and Mansfield, *The Humiliation of Sinners*.

²³ Unfortunately for us all, Beek's work was published posthumously and has never been translated into English, though the book includes an English summary of his chapters at the end of the volume (Beek, *Waanszin in de middeleeuwen*). Many thanks to Hubert van Tuyll for correcting my translation of the title.

²⁴ See n.18 above for these first three.

²⁵ Neugebauer, 'Treatment of the Mentally Ill'. See also: Neugebauer, 'Mental Illness and Government Policy'.

²⁶ Sutherland, 'Peytevin v. La Lynde'.

²⁷ Clarke, *Mental Disorder in Earlier Britain*.

Many other medieval scholars write on tangential topics that have been helpful to this study like disabilities,²⁸ suicide,²⁹ marriage,³⁰ gender,³¹ law,³² medicine and surgery of the head,³³ and others. These scholars continue to influence my overall knowledge and the character of how I describe the care and custody of the mentally disabled in medieval England. Yet, there is no study to date like this. Since Foucault's work on madness appeared in 1961, discussions have surrounded the topic of mental illness, the 'fringe' of society. In the last forty years, a few articles have begun to appear on more concrete historic case studies; yet, none have taken up the history of medieval madness as a full study, in part because it is a difficult area to research. Basil Clarke's study in 1975 on *Mental Disorder in Earlier Britain* began new discussions. His work incorporated a few case studies and that started many people thinking about other cases and other historic persons. My study redefines the study of mental incapacity as well as building upon this earlier research.

Organization Schema

This study is arranged both chronologically within each chapter and from broad understandings to specifics of individual cases. The first chapter, 'Sources of Social and Cultural Perceptions', looks at several factors that contributed to the medieval English attitudes and conceptualizations of mental afflictions.

²⁸ Article collections: *The Treatment of Disabled Persons in Medieval Europe*, ed. by Turner and Pearman; *A World of Difference*, ed. by Eyler. Monographs of importance: Metzler, *Disability in Medieval Europe*; Wheatley, *Stumbling Blocks before the Blind*, and Wheatley, "Blind" Jews and Blind Christians'; Cohen, *Hybridity, Identity, and Monstrosity*.

²⁹ Butler, 'Cultures of Suicide?'; and Butler, 'Local Concerns'; MacDonald and Murphy, *Sleepless Souls*; Murray, *Suicide in the Middle Ages*.

³⁰ McSheffrey, *Marriage, Sex, and Civic Culture*.

³¹ Green, 'From "Diseases of Women" to "Secrets of Women"'; and Green, *Making Women's Medicine Masculine*.

³² There are too many examples of law to list here. For a complete list, see the Bibliography. The ones I turned to with great regularity to elucidate and contextualize my findings at The National Archives include: Biancalana, *The Fee Tail and the Common Recovery*; Bothwell, *Edward III and the English Peerage*; Brand, *The Making of the Common Law*, among many others; Green, *Verdict According to Conscience*; Hudson, *Land, Law, and Lordship in Anglo-Norman England*; Lyon, *A Constitutional and Legal History of Medieval England*; Palmer, *English Law in the Age of the Black Death*, and Palmer, *The County Courts of Medieval England*; and Waugh, *England in the Reign of Edward III*, and Waugh, *The Lordship of England*.

³³ See nn. 9, 16, 19, and 25 above.

Beginning with the Roman legal tradition, the chapter then examines the ecclesiastical and biblical underpinnings for medieval ideas about mental incapacity. A few examples from literature give a summary of these ideas — that a mentally impaired person was either being punished for sin or being protected as an innocent by God.

Continuing with background that influenced societal understanding of the mentally disabled, Chapter Two, ‘Legal Opinions of Mental Ability’, examines changes in the legal standing of the mentally incapacitated from about 1230 to 1330. It looks at the context of the *Prerogativa regis*, a document with two brief chapters on royal care and custody of the mentally disabled. In Chapter Two, the major commentaries on the law — *Bracton*, *Britton*, *Fleta*, and *The Mirror of Justices* — are also compared as to their understanding of mental disabilities from a legal perspective. In Chapter Three, ‘Determining Insanity’, the administrative implementation of the law is discussed as well as the terminology they employed. This terminology is then compared to that of contemporary physicians. The medical understanding of the brain, in three ventricles, becomes integral to understanding the social classifications of mental conditions. Chapter Four, ‘Investigating Competence’, continues this exploration of the administrative and royal arm reaching into the lives of mentally impaired citizens. It walks through the process of investigations of competence including what happened to the person and his property.

Chapter Five focuses on crime and criminals who manifest mental illnesses or have longstanding mental conditions. This chapter on ‘Criminals’ investigates the actions, trials, and punishments of those persons (who are normally sane) committing crimes while mentally incapacitated (such as with a fever) and mentally impaired persons who do likewise. There is a discussion here of how and why mental incapacity could be used in court as a defence and how the determination of an individual’s mental state could be made post-mortem, especially in cases of suicide. The chapter concludes with a look at punishments and non-punishments, and why they were enforced.

‘Protecting Inheritances’, Chapter Six, brings the king’s prerogative of claiming all impaired landholders as his wards into the picture. This action by the crown creates interesting and complicated social dynamics between the disabled person, his or her family, the crown, and his representative in the form of a guardian. Chapter Seven continues this conversation about land and wards, scrutinizing ‘Royal Prerogative Wardship’ of the mentally impaired and disabled, revealing how they functioned, how the crown benefited, and how they were expanded from the *idiot*, the ‘congenitally incompetent’, to include other persons with mental conditions who held land. Chapter Eight, ‘Guardians’,

argues that the abuse in the system, especially at the level of the guardian, was at times ignored by the crown and at others dealt with quickly and efficiently. Many guardians stole property or goods from their wards, a new problem with which royal administration had to learn to cope.

‘Medieval Wardship Wanes’, Chapter Nine, begins with a brief look at Henry VI and how his policies as well as his illness, which was in part a mental illness, led to an impoverishment of England. Alongside this downward political and economic trend, the institution of wardship fell. The continued confusion — through suspension and re-granting of wardship properties — threw the entire system of wardship into a period of chaos. People needed immediate relief, not when it was convenient for this king or that. This chapter also, then, compares royal prerogative wardship of the mentally incapacitated to that of chartered boroughs and cities. It explores the reasons for wardships to be set aside through the use of wills or circumvention, as well as a growing interest in hospitals with the rise of populations within cities. All this confusion and change led to a negative shift in society’s attitude toward the mentally impaired.

Following the conclusion, there are two appendices. The first is self-explanatory, ‘Terms Used to Describe the Mentally Impaired and Disabled in Medieval England’. The second is one of the many datasets used to calculate background statistics for this study. Here are included the names and resources, both published and unpublished, of many of the cases used in this study. The hope is that many other scholars will be able to address the issues of care, custody, and treatment, beginning a dialogue about mental disability in the Middle Ages.

* * *

This book is about the administration of the lands, movable properties, and bodies of persons with some form of mental incapacity in medieval England. The book delves into medieval conceptions of mental conditions in legal and administrative law and practice, but it makes no claims to cover all medieval thoughts on mental health. When necessary, this work also touches on medieval medicine for mental illnesses and the theological understanding of the potential sinfulness or innocence of those with mental conditions; more centrally, though, this book is about the administrative care and custody of people with mental incapacity in late medieval England. The research here investigates those who show up in the royal records, including court rolls, chancery records, Exchequer files and inquisitions, and other administrative or legal records. Because of these limiters, this study does not include many people without real or feudal property, and most of those included without property have commit-

ted crimes. This work examines the treatment of the mentally incapacitated — whether ill, disabled, or impaired — from approximately 1200 to 1500 and opens a window through which to see society's treatment, protection, abuse, care, and custody of the mentally incapacitated in later medieval England.

SOURCES OF SOCIAL AND CULTURAL PERCEPTIONS

The Lord will cause you to be defeated before your enemies [if you do not obey him] [...]. The Lord will smite you with madness and blindness and confusion of mind (*percutiat te Dominus amentia et caecitate ac furore mentis*); [...] A nation which you have not known shall eat up the fruit of your ground and of all your labours; and you shall be only oppressed and crushed continually; so that you shall be driven mad by the sight which your eyes shall see (*et stupens ad terrorem eorum quae videbunt oculi tui*).¹

The Bible and its images of ‘mad’ persons greatly influenced the medieval English perception and descriptions of the mentally incapacitated and incompetent. All peoples living in early medieval England — Britons, Romans, Anglo-Saxons, Danes, Normans, Christian or not — had a few basic assumptions in common on the subject of the mentally incapacitated: they had impaired reasoning abilities, at times could not care for themselves, and a few returned to or had intermittent sanity. Beyond these general concepts, little can be said about the specifics of early care and custody of the mentally incapacitated in England because of a paucity of materials before 1250 on which to base any assumptions. The English royal administration had not yet taken a strong role in the lives of the mentally disabled. The early influences upon English perceptions of the mentally incompetent came from biblical and classical texts, both of which continued to play a role in common perception well into the early modern period. This chapter will briefly examine how these

¹ Deuteronomy 28. 25–28, 33–34. The English is from: Watts, ‘Deuteronomy’, pp. 274–75. The Latin is from: *Biblia sacra*, ed. by Weber, pp. 272–73.

influences became the framework surrounding the care and treatment as well as the image and perception of the mentally incapacitated in medieval England.

The Romans, though only in England briefly, influenced many of the people who settled there, including the Christians. Romans drew a distinction between mentally ill persons who raged and mentally feeble persons who did not. The Romans differentiated between those individuals born mentally incapacitated and those who became mentally incapacitated later in life.² Some Greek information — from legal, medical and philosophical treatises on the mind, the brain and insanity — had earlier become part of the Roman body of medical and legal literature, much of which eventually made its way to England.³

After a resurgence of interest in Roman law in the twelfth century, English legal treatises similarly pointed to a separation between those born and those who become mentally incapacitated, with less emphasis on raging or not raging. The records from royal sources of the mentally disabled for early and high medieval England provide insight into how royal officials treated individuals with mental difficulties and how the law categorized them within society. Much of what the collective record implies as the general treatment of the mentally incapacitated during this early period is borne out in the establishment of 'Bracton's' work, *De legibus et consuetudinibus angliae* (*The Laws and Customs of England*), as the treatise on English law at the end of this period sometime between 1230 and 1260.⁴

² Lee, *The Elements of Roman Law*, Code v. 70. 6, 'Cum aliis quidem hominibus continuum furoris infortunium accidit, alios autem morbus non sine laxamento ingreditur, sed in quibusdam temporibus quaedam eis intermissio pervenit, et in hoc ipso multa est differentia, ut quibusdam breves indutiae, aliis maiores ab huiusmodi'; 'It sometimes happens that the affliction of insane men remains continuous, and with others the attacks of disease are suspended, and lucid intervals occur, and in this latter instance a great difference exists, for some of the lucid intervals are short, and others are of long duration' (*The Civil Law*, trans. by Scott, XII: *The Code of Justinian*, pp. 276–79, esp. p. 277). See also: Trenchard-Smith, 'Perceptions of Unreason in the Byzantine Empire', p. 92 For more information on the treatment of furiosi in Roman law, see Lee, *The Elements of Roman Law*, pp. 94, 204, 350.

³ Porter, *The Greatest Benefit to Mankind*, pp. 69–72. Siraisi, *Medieval and Early Renaissance Medicine*, pp. 10–11.

⁴ It seems that this text was possibly begun by or under William of Raleigh, worked on by Gilbert of Thornton and Henry of Bratton (Bracton). Many of the cases discussed in *De legibus* are from the 1220s and 1230s. Most of the text, if not all, was in place by 1240–50. See: Brand, 'Bratton, Henry of', and Brand, 'Thornton, Gilbert of'; Turner, *The English Judiciary in the Age of Glanvill and Bracton*, esp. pp. 234–37; and G. O. Sayles, 'Introduction', in *Fleta*, ed. and trans. by Richardson and Sayles, IV, p. xv.

Classical Terminology and Concepts

Latin terms for categorizing the mentally incapacitated might have been adopted into the local vocabulary in England during the Roman occupation or later, since Latin, of course, continued as the language of the learned. This does not necessarily mean that the local people wholly adopted the Roman legal treatment of the mentally ill or their philosophy on care strategies for the mentally disabled. The Roman distinctions between types of mental incapacity, though not firm, were basically whether a person raged or was passive, whether he had times of sanity or not, and whether he was ill or had a recurring ailment. Later readers had difficulty in isolating one word's meaning from the next because the persons described often had multiple 'symptoms' leading later translators to associate or conflate multiple symptoms with one term.⁵ Writers of Roman law divided the mentally incapacitated into two main categories: first, *furiosus* was the term for a raging, passionate, or unsettled person; and second, *non compos mentis* indicated those who had lost mentally capacity or literally were 'without mental health'.⁶ *Non compos mentis*, *non sane mentis*, or another variant on this theme, was somewhat more neutral as a phrase, meaning 'without sense'. *Furiosus* seems to have been used more specifically as 'madman'.

While the Roman legal vocabulary had no special terms for those persons with or without lucid intervals, it did make the occasional distinction between continuous insanity and periodic or intermittent insanity.⁷ In summary, the Latin terminology for all mental conditions was broadly placed into the two categories of mentally raging and mentally lacking — *furiosus* (raging, raving, mad, furious) and *non compos mentis* (without full possession of mental faculties) — to which were added descriptive qualifiers to indicate duration or severity.

⁵ Trenchard-Smith, 'Perceptions of Unreason in the Byzantine Empire', p. 90.

⁶ Turner, 'Defining Mental Afflictions'.

⁷ Lee, *The Elements of Roman Law*, Code v. 70. 6. See also: Code vi. 22. 9. 'Furiosum in suis indutiis ultimum condere eloquim posse, licet ab antiquis dubitabatur' (*Corpus iuris civilis*, ed. by Krueger and others, II: *Codex Iustinianus* (1959), p. 253); 'An insane person can execute a will during a lucid interval, although this was doubted by the ancient authorities' (*The Civil Law*, trans. by Scott, XII, 327). See also *Digest*, XXVIII. 1. 2, 6–7; and *Institutes*, II. 7, § 1. Roman law provided that if a feeble-minded man became lucid and remained that way, he could even act as a *curator* for another. *Institutes*, I. 14, § 2. 'Furiosus vel minor viginti quinque annis tutor testa mento datus tutor erit cum compos mentis aut maior viginti quinque annis fuerit factus'; 'A person nominated by will as tutor who is a lunatic or under twenty-five years of age, will become tutor on recovering his sanity or reaching twenty-five' (Justinian, *The Institutes*, ed. by Thomas, p. 45).

Other Latin terms besides *furiosus* that indicated a person possibly born with his affliction and certainly mentally unsophisticated included: *fatuus* (fool, silly person, imbecile), *stultus* (foolish, fatuous, silly, stupid), and *vecors* (senseless, foolish, mad). Just as with *furiosus*, all of these terms indicated low or limited capacity for reason. Further, these terms also could indicate a lack of bodily control along with poor mental capacity. Those *furiosus* that lashed out at others not only had custodians or guardians, but were also kept from harm and harming through incarceration or restraint. This did not mean that all persons labelled as *furiosus* in Rome raged outwardly, which became quite the opposite in later medieval England. These classical terms regarding mental rage, therefore, only indicated a condition of restless or uneven mental activity, often resulting in a lack of physical restraint, even though other meanings could be indicated or implied from the context.⁸

The same was true of the phrase *non compos mentis*. This phrase did not exclusively mean that the person described had become mentally incapacitated. *Non compos mentis*, without mental capacity, was occasionally used in Roman texts to describe persons who had been born with mental afflictions. This phrase was used to express an absent or poor ability to reason. Persons who lost their capacity to think clearly and completely might have been injured or ill, hence the implication in the related phrase *non sane mentis*, without mental health. Both phrases carried the implication that a sufferer of this type of mental affliction was passive and non-violent, which was not true of these phrases in later medieval England. Another term used to indicate low mental ability was *idiotia*, which in Rome described an uneducated, ignorant, and ‘common’ individual. In the early Middle Ages, *idiotia* most often meant ‘commoner’. Only in the later Middle Ages did *idiotia* come into its more complicated meaning of ‘inward looking’ or ‘unaware’. Subsequently, by the fourteenth century in England, *idiotia* indicated someone born with poor mental ability.⁹

In late antiquity and throughout the Middle Ages, though *non compos mentis* sometimes indicated an individual who had become mentally afflicted, the passiveness implied in this term was not helpful in describing those who became ‘insane’ and raged. Roman texts identify such an individual as *furiosus*, born or not with his condition. Yet, Latin has other terms to describe persons who became mentally ill, as opposed to those persons with low mental competence. The rage sometimes associated with mental illness could be caused by

⁸ Trenchard-Smith, ‘Perceptions of Unreason in the Byzantine Empire’, pp. 90–91.

⁹ Turner, ‘Defining Mental Afflictions’.

fever or other sickness, and persons with this type of mental rage were called *freneticus* (to be affected with delirium or madness) or *amens* or *demens* (mad, insane, senseless, out of one's mind; literally 'mindless'). These mentally ill persons were affected by *insanitas* (disease, unsoundness), *amentia* (madness, insanity), or *mania* (mental derangement with great agitation or excitement and often hallucinations). Many authors throughout the Middle Ages used the term *lunaticus* (moon-sick), which described something akin to the Celtic and Anglo-Saxon understanding of *món-seóc* (possibly moon-sick since *mona* means 'moon')¹⁰ or *monap-sick* (month-sick). A *lunaticus* was a person who had periodic episodes of mental illness, possibly suffering from a cyclical ailment like the modern bi-polar disorder, or was an 'epileptic', as in the epileptic demoniac in the Gospels.¹¹

The Anglo-Saxons used many other terms besides *món-seóc* and *monap-sick* to describe the mentally incapacitated. Some of those terms include references to elves interfering with mental capacity or injuring a person to the point of mental disarray.¹² Others of those terms, such as *folle* from the Middle French *fol*, speak to the supposed 'empty' quality of their minds.¹³ Anglo-Saxons also referenced the mentally incapacitated person's lack of wit, as in *gewitleasa*, witless, which in the British Library manuscript Harley Latin and Old English Glossary was equated to *freneticus*.¹⁴ *Furor*, in Latin meaning madness or in a state of rage, was described as meaning *repnes*, in a state of rage, and *woden-dream*, mad ecstasy.¹⁵ In the same Harley manuscript, *furia*, meaning raging, was listed as *dea wodscipe*, goddess of raving, and later as *hatheortnessa*,

¹⁰ See: Bonser, *The Medical Background of Anglo-Saxon England*, esp. p. 257, and also his chapter 'Mental Disease and Devil Possession', pp. 257–63.

¹¹ Matthew 17. 15–20 and Luke 9. 38–43.

¹² Such as described in Jolly, *Popular Religion in Late Saxon England*. See also Eberly, 'Fairies and the Folklore of Disability', p. 58.

¹³ *The Harley Latin–Old English Glossary*, ed. by Oliphant, p. 194, l. 623, *folle bubulum* is equated in a note with the lemma and the gloss lists as *hwite cylle*, possibly *wite cylle*. See also references to other Latin terms on p. 124 (l. 170, *dementicus*), p. 146 (l. 13, *ebitudo*, equated to *fatuitas* and *stultitia*); p. 178 (l. 154, *fantasia*); and those listed in the notes below.

¹⁴ *The Harley Latin–Old English Glossary*, ed. by Oliphant, p. 197, l. 696, see also l. 697.

¹⁵ *The Harley Latin–Old English Glossary*, ed. by Oliphant, p. 204, l. 904 (*furor*), and ll. 907 and 912 (*furia* and *furias*). See also, l. 905 (*furis* equated to *insanis*). Further, in the same text see p. 207, ll. 992 and 994 (*furias*, *furiata*). Some will also find interesting the terms on p. 206, *furtim* equated to *secrete*, *furtiuus* to *secretis*, and *furtina* to *clandestina* and *secretata*, among others. There are other glosses as well that have similar definitions and suggested translations.

hot-heartedness. In the Anglo-Saxon texts, mental incapacity could also be described as *wodness*, or to be *wode* (*wod*, *wood*), which was to be mad, as in *wodesdream* above.

Medieval English society picked up the division between those born impaired and those who developed mental conditions later — the *fatuus* and *non compos mentis* respectively; while, they reserved the term *furiosus* — much as the Romans did — for enraged individuals, often the criminally insane.¹⁶ Medieval English legal commentaries, administrative records, and court documents make use of many of the Latin terms for mental conditions, and occasionally French and Middle English ones, to describe individual conditions and symptoms as best they could as non-medical persons. Legal, administrative, and most ecclesiastical works made no claim to medical understand of mental conditions and instead used the social categories of poor cognitive ability, impaired ability, occasional ability, potentially dangerous, and temporarily mentally ill to categorize the mentally incapacitated.

Biblical Influences

Influences on medieval attitudes toward treatment of mentally incapacitated persons came not just from Roman legal texts, but also, and perhaps even more importantly, from the Bible and ecclesiastical literature. Biblical tales spoke of Christ healing the mentally ill and the demonically possessed in nearly the same breath. New Testament stories and other accounts from the Old Testament impacted the cultural perception and social understanding of the mentally incapacitated.

There are several well-known selections in the biblical text that discuss individuals struggling with mental issues: in the Old Testament the characters of Job, Nebuchadnezzar, and King Saul stand out, and in the New Testament Mary Magdalene and the epileptic demoniac. While an argument can be made that the epileptic demoniac had a mental illness, the biblical stories of Job, Nebuchadnezzar, King Saul, and Mary Magdalene do not describe the characters in terms of mental illness or incapacity. Still, these individuals, and other biblical images of mental illness,¹⁷ demonstrate how mental illnesses were

¹⁶ This division into three, rather than two, is discussed in full in Chapter 3, along with more information on medical treatment and terminology.

¹⁷ There are some that follow in the chapter below. Other examples include, ‘I said to myself [Koheleth, the preacher], “I have acquired great wisdom, surpassing all who were over Jerusalem

understood in medieval history. The image of a lack of mental health as punishment for sin affected how medieval persons perceived the mentally afflicted.

In biblical accounts of mental problems, there seem to be at least two broad categories, which were quite different from those in Roman texts. Rather than raging and passive — both differences in the quality of the condition of the person — the biblical division was by cause, internal and external, both of which could lead to either raging or passive mental conditions. Internal evil spirits, demonic possession, or the collapse of internal rationality could lead to spiritual and rational poverty (Nebuchadnezzar), fury (Magdelene), anxiety (King Saul), or illness (the epileptic demoniac). External sources of torment could also lead to internal mental numbness or turmoil (Job). The text of Deuteronomy, quoted at the beginning of this chapter, discusses both an internal madness sent by God and, distinct from this internal torment, an external source of madness brought on by disobedience to God. According to this biblical author, on the one hand, God would cause mental and physical blindness and confusion for disobedience: ‘The Lord will smite you with madness and blindness and confusion of the mind’ (‘percutiat te Dominus amentia et caecitate ac furore mentis’). On the other hand, He would allow enemies to oppress the disobedient to the point of madness: ‘you shall be driven mad by the sight which your eyes shall see’ (‘et stupens ad terrorem eorum quae videbunt oculi tui’).¹⁸ The distinction between internal and external causes — both of which appear in this selection — often correlated to internal or external sins of the mind, for example, lust, arrogance, or pride.

In the texts about Job and Nebuchadnezzar, terms of madness were never used even though both of these individuals were often discussed in medieval sources as being under mental duress.¹⁹ Job does say at one point in his trials that, ‘My spirit is broken,’²⁰ yet he never loses a sense of himself or of God. He is physically beaten down and infected, but not mentally. The idea of external torture causing Job mental torment persisted throughout the Middle Ages in

before me; and my mind has had great experience of wisdom and knowledge.” And applied my mind to know wisdom and to know madness and folly. I perceived that this also is but a striving after wind’ (Ecclesiastes 1. 16–17); ‘And as he thus made his defence, Festus said with a loud voice, “Paul, you are mad; your great learning is turning you mad.” But Paul said, “I am not mad, most excellent Festus, but I am speaking the sober truth”’ (Acts 26. 24–25); ‘The prophet is a fool, the man of the spirit is mad, because of your great iniquity and great hatred’ (Hosea 9. 7).

¹⁸ Deuteronomy 28. 25–28, 33–34; see n. 1 this chapter.

¹⁹ Doob, *Nebuchadnezzar’s Children*, pp. 60–65.

²⁰ Job 17. 1.

part because of the severity of what he endured. Job, though mentally stressed, did not sin and, therefore, never mentally collapsed or lost his sense of self.

Nebuchadnezzar, unlike Job, did sin and is actually stripped of his humanness, a defect that places him in the category of being human in form but not in substance — a mental incompetent. Nebuchadnezzar became like an ox of the field:

A voice from heaven tells him [...] ‘you shall be driven from among men, and your dwelling shall be with the beasts of the field; and you shall be made to eat grass like an ox; and seven times shall pass over you, until you have learned that the Most High rules the kingdom of men and gives it to whom he will.’²¹

Prior to this seven-year period of irrational behaviour, Nebuchadnezzar had dreams that frightened him,²² and in a ‘furious rage’ (*in furore*) he threw three of his Jewish administrators into a fire.²³ God’s punishment in many medieval religious tales for sins of pride and arrogance in relationship to that which is God’s, was to strip an individual of the source of the pride: his humanness. God suppressed Nebuchadnezzar’s human rationality in the biblical story so that he acted like an animal, much as God did in the medieval poem of Robert of Sicily discussed below.²⁴

²¹ Daniel 4. 31–32. There is a new debate about the name of Nebuchadnezzar, and with the discovery of the Qumran Scrolls from the Dead Sea, the debate has been an interesting one. Some scholars say that ‘Nebuchadnezzar’ cannot be questioned because of his historical importance in the area and, therefore, in this biblical tale. Others look to the name in the Dead Sea Scrolls — Nabonidus — as the correct one. Nabonidus, who ruled later after Nebuchadnezzar, his son, his son-in-law, and his grandson, was the last of the Babylonian kings, and he was sick for nearly ten years during his reign when Belshazzar ruled in his stead. See: Owens, ‘Daniel’, pp. 402–03. Owens also points out that Nebuchadnezzar’s illness might be what is now called lycanthropy, which is the belief that one is an animal (wolf, or other). For more on lycanthropy, see: Bauer, ‘The Werewolf’s Closet’.

²² Daniel 4. 4–18.

²³ Daniel 3. 13, 19–20: ‘(13) Then Nebuchadnezzar in furious rage [lit. in rage and burning anger] commanded that Shadrach, Meshach, and Abednego be brought [...]. (19) Then Nebuchadnezzar was full of fury, and the expression of his face was changed against Shadrach, Meshach, and Abednego. He ordered the furnace heated seven times more than it was wont to be heated. And [...] to cast them into the burning fiery furnace’; Owens, ‘Daniel’, pp. 394–96. The explanation of the literal translation is Owen’s; ‘(13) Tunc Nabuchodonosor in furor et in ira praecepit ut adducerent Sedrac Misac et Abdenago [...]. (19) Tunc Nabuchodonosor repletus est furore et aspectus faciei illius inmutatus est super Sedrac Misac et Abdenago [...] missi sunt in medium fornacis ignis ardentis’ (*Biblia sacra*, ed. by Weber, pp. 1347–48).

²⁴ ‘Robert of Sicily’, ed. by French and Hale. Many thanks to V. A. Kolve for suggesting that I look at this incredibly important poem. See also the wonderfully illustrated work on the fool

Job, who does not sin and maintains his rationality, is never described as mad; Nebuchadnezzar, who does sin, loses his ability to behave as a human being, and this behaviour places him in the category of the mentally incapacitated. King Saul also sins and his sin is, like Nebuchadnezzar's, a direct affront to God. Saul violently opposes God's choice for the next king, David. The author of 1 Samuel describes God's anger at Saul's sinful behaviour toward God's chosen successor of Saul: 'Now the Spirit of the Lord departed from Saul, and an evil spirit from the Lord tormented him. And Saul's servants said to him, "Behold now, an evil spirit from God is tormenting you"'.²⁵ Saul does not recognize his state until his servants point out the evil spirit. Often in ecclesiastical literature, the afflicted individual cannot see his obvious state of madness, which is part of his mental dilemma.²⁶

Three excellent examples of non-biblical descriptions of madness in religious contexts are found in Felix's *The Life of St Guthlac of Crowland* from the eighth century, the *Life of St Wulstan* from the twelfth century, and the long poem of 'Robert of Sicily' from the fourteenth century. Together they illustrate the dual innocent-guilty image of the mad in the Middle Ages. The mad could be innocent, protected by God as simpletons or attacked by devils or demons according to popular teachings. The mad could be crazed by their love of God, a holy madness, verging on saintliness. Or, the mad could be guilty of some sin — especially lust, arrogance, or pride — toward God, the church, or its representatives.²⁷

In the eighth-century tale, an 'evil spirit' attacks Hwaetred, the young heir of an East Anglian nobleman, without provocation, changing him so that he is violent toward himself and others:

Such a madness fell upon him that he mutilated his own body in any way he could, with sticks, knives, nails, and teeth. Not only would he so mangle himself in his cruel insanity, but he would even lacerate with his convulsive biting anyone he could approach. In the same fashion he began so to rave that no one could restrain him or bind him; for at one time when a crowd gathered as some others were trying to tie him up, he sent the bodies of three men to their death, striking them to earth with laughing blows of a hunting ax he had picked up.²⁸

by Kolve, 'God-Denying Fools and the Medieval "Religion of Love"'.
²⁵ 1 Samuel 16. 14–15.

²⁶ See n. 24 above on the poem of 'Robert of Sicily', ed. by French and Hale.

²⁷ Huot, *Madness in Medieval French Literature*, pp. 1–39.

²⁸ Felix, 'The Life of St Guthlac of Crowland', ed. by Jones, p. 147.

The young man remained in this state for four years, according to Felix. His parents had tried to treat him with godly power; they ‘took him about to the feet of the saints. But though he was bathed in the holy fonts by priests and bishops, none of them could cleanse away the pestilent virus of that malignant spirit.’²⁹ Finally his parents, ‘dejected’, learn of ‘a certain hermit settled on the isle of Crowland in the midst of the fen’ and take their son to see him. Guthlac pities the young man and his parents. He takes the ‘vexed one’ inside the ‘oratory’ and prays for three days while fasting. The text does not say if the boy does the same or not. After the three days,

[Guthlac washes the boy] in the waters of the holy font and, blowing into his face the breath of his own well-being, he forced out the whole grip of the malignant spirit. Like one who has been dragged from the sucking undertow of the tide, catching his breath with great gasps deep in his chest, he realized that he had returned to his early sound health. From that time till the day of his death, he suffered no further molestation from any unearthly spirit.³⁰

This story illustrates that medieval concept that an evil spirit could attack some persons for no reason. The victims were innocents living with an apparent mental condition imposed on them by the outside forces of demons or devils.

There is also a biblical image of the innocent individual possessed or tormented by demons. Luke writes in his gospel (8. 1–3) that Jesus

went on through cities and villages, preaching and bringing the good news of the kingdom of God. And the twelve were with him, and also some women who had been healed of evil spirits and infirmities: Mary, called Magdalene, from whom seven demons had gone out³¹

and Joanna and Susanna. Magdalene was not portrayed here or elsewhere in the biblical text as a sinful person; she was an innocent tormented by demons, an external cause, which, presumably, Jesus cast out of her.

The epileptic demoniac described in both of the gospels of Matthew and Luke is also portrayed as an innocent, and Jesus cures him. Matthew writes that a man approached Jesus and explained the illness of his son, “Lord, have mercy on my son, for he is an epileptic (*lunaticus*) and he suffers terribly” [...] [Jesus tells the man to] “bring him here to me”. And Jesus rebuked him, and the

²⁹ Felix, ‘The Life of St Guthlac of Crowland’, ed. by Jones, p. 147.

³⁰ Felix, ‘The Life of St Guthlac of Crowland’, ed. by Jones, p. 148.

³¹ ‘Maria quae vocatur Magdalene de qua daemonia septem exierant’ (Vulgate).

demon came out of him, and the boy was cured instantly'.³² The same story is repeated in Luke:

And behold, a man from the crowd cried, 'Teacher, I beg you to look upon my son, for he is my only child; and behold, a spirit seizes him, and he suddenly cries out; it convulses him till he foams, and shatters him, and will hardly leave him. And I begged your disciples to cast it out, but they could not.' Jesus answered, 'O faithless and perverse generation, how long am I to be with you and bear with you? Bring your son here.' While he was coming, the demon tore him and convulsed him. But Jesus rebuked the unclean spirit, and healed the boy, and gave him back to his father. And all were astonished at the majesty of God.³³

In this story, it is the faith of the disciples that is in question, not the sins of the boy or his father. The mental illness of the boy was a 'demonic' illness and not a punishment.

In the *Life of St Wulstan* from the twelfth century, the madness of a young man was brought on as a result of quite another matter. The young man waits with a group of people outside a monastery to catch a glimpse of Wulstan, already known for his saintliness. The young man 'began to mock the saint' who was taking a long time to show because, unknown to the waiting throng, he was frail with age and after a long journey, he had been advised to rest. The young man in the story finally says to the gathering,

Why do ye tarry for the Bishop who is filling his belly with the monks? Come: if any man would have his child signed, let him come to me. There with he took mud and smeared the face of the nearest infant, muttering unseemly words. The madness spread.³⁴

Soon the common folk in the story were laughing and joking about the whole affair. Yet as an example to the crowd, God disciplined with insanity only the young man guilty of instigating the insolence: 'Soon the guilty scorner fell to raving before them all. The devil who had tempted him to sin now drove him to frenzy. He tore his hair — he grinned — he beat his head against the wall.

³² Matthew 17. 15–20. 'Domine miserere filii mei quia lunaticus est et male patiture nam saipe [...] et increpavit ei Iesus et exiit ab eo daemonium et curatus est puer ex illa hora' (Vulgate).

³³ Luke 9. 38–43. The word *lunaticus* in these passages is traditionally translated as 'epileptic' rather than 'lunatic', which is curious since in many other contexts it would maintain its Latin root in the translation and just be translated 'lunatic'.

³⁴ William of Malmesbury, *Life of St Wulfstan*, ed. and trans. by Peile, bk II, chap. 14, pp. 50–55. See also: William of Malmesbury, *The 'Vita Wulfstani'*, ed. by Darlington.

The people acclaimed the miracle, and praising God, drove the maniac away'.³⁵ The story continues as the young man wanders around until he falls into a well only to be hauled out by a few of his kinsmen. He is carried to an inn, and Wulstan, upon learning what had happened, grieved 'for the young man's fault and for his punishment'. Wulstan 'sent him [a] blessing and the sufferer got back his wits', only to die 'a few days later of what he had done or suffered in his madness'.³⁶ The extreme nature of the young man's affront to God's servant, St Wulstan, caused a supernatural insanity that resulted in death. Within ecclesiastical literature, insanity was often attributed to disrespect of God, the church, or its representative.³⁷

Though the two stories stand in complete opposition as to cause — one the story of an innocent young man attacked for no apparent reason by a demon and the other a story of a guilty young man who mocked the church and its representative punished — the descriptions of the raging of these two young persons are not terribly different. Both capture the essence of self-mutilation and abuse, as well as lashing out at others who try to help. Hwaetred 'mutilated his own body' with weapons and his own teeth. The young man in St Wulstan's story tears his hair and beats his head against the wall. Both display inappropriate emotional responses. Hwaetred laughs as he murders three men and the young man who blessed the child with mud grins as he abuses himself. The story of Hwaetred ends with his return to mental health through the faith of God's saint and Hwaetred's parents. It says nothing of any will of conscience on the part of Hwaetred. The story of the other young man ends with the saint blessing him, giving him time to gain God's forgiveness, the reader presumes, but only a few days, after which he dies.

In the poem of 'Robert of Sicily', written sometime before 1370, King Robert mocks God and the Bible at an evensong service when he laughs out of pride. The king falls asleep only to awaken to a changed world. The sexton

³⁵ William of Malmesbury, *Life of St Wulfstan*, ed. and trans. by Peile, bk II, chap. 14, pp. 50–55.

³⁶ William of Malmesbury, *Life of St Wulfstan*, ed. and trans. by Peile, bk II, chap. 14, pp. 53–55.

³⁷ It seems that this story is blending the images of the challenger to God's representatives, such as the biblical story of Saul, and the fool of the Psalms 13 and 52 (Vulgate numbering; Post-Reformation Bibles and Jewish Bibles number these verses as Psalms 14 and 53), which each read, 'The fool (*insipiens*) says in heart, "There is no God"'. Some Latin texts have *stultus* in place of *insipiens*. For more information on this verse, see esp. Kolve, 'God-Denying Fools and the Medieval "Religion of Love"'.

chases him out of the church, thinking the king 'was sum wood man'.³⁸ The king tries to tell everyone that it is he, the king, but they either scoff or pity the poor fool. An angel has taken his place on the throne and Robert, often described by scholars as mentally incapacitated, becomes the angel's court fool.

'þow art my fol', seide þe angel;
'þow schal be schoren, euerichdel,
Lych a fool, a fool to be.
Wher is now þi dignité?'³⁹

The character of the fool was the one literary figure devoid of all dignity, perfect for the punishment of pride. After quite a while of living as the court fool and eating with the dogs under the table, Robert finally realizes that he was prideful and is sorry. He prays for forgiveness, knowing that his punishment is just and accepts it.

And þenne he þouȝte on his trespass:
He þouȝte on Nabugodonosore,
A noble kyng was him bifore.⁴⁰

Nebuchadnezzar was punished for his pride as an animal in the wild, and Robert's recollection of this biblical tale brings him to understand his own punishment. Robert finally admits that the angel is king and that he, Robert, is nothing but a fool. Instantly, the angel returns Robert to his former state and his role as king, and the angel disappears.

Robert's character in the story is not all that different from the young man in the story of St Wulstan. Both were punished for making fun of church ritual and its hierarchy and leadership. Robert laughed in pride at a church service and was punished for his pride by having everything for which he might have been proud taken away. The young man in St Wulstan's story, mocked the church and indirectly God, a more serious offence, for which he received frenzy and, as a result of his frantic actions, death.

To further confuse the issue, madness could be faked and was from time to time, indicating a general awareness of the behaviour of the feeble-minded. In 1 Samuel, there is a passage in which David, after he became king, feigned

³⁸ 'Robert of Sicily', ed. by French and Hale, l. 86, p. 936.

³⁹ 'Robert of Sicily', ed. by French and Hale, ll. 153–55, pp. 937–38.

⁴⁰ 'Robert of Sicily', ed. by French and Hale, ll. 308–10, p. 942.

madness to hide from Saul as well as throw off Achish the king of Gath and his servants.⁴¹

And David [...] was much afraid of Achish the king of Gath. So he changed his behaviour before them, and feigned himself mad in their hands, and made marks on the doors of the gate, and let his spittle run down his beard. Then said Achish to his servants, 'Lo, you see the man is mad; why then have you brought him to me? Do I lack madmen, that you have brought this fellow to play the madman in my presence? Shall this fellow come into my house?'⁴²

According to Ben F. Philbeck, Jr, most people at the time would have considered a madman to be possessed by spirits, and some scholars have said that David, knowing he would be in danger anywhere in Israel, used the image of the madman to hide.⁴³ Yet, he is not portrayed as fearing that the people would think him a sinner and punish him in any way.

With these biblical images in mind, medieval persons perceived the mentally incapacitated as either already in a state of punishment from God, or as innocents tormented by demons and in need of an exorcist and prayer. These two conflicting concepts of punished sinner and afflicted innocent left medieval English communities unable to fully reject or fully embrace the mentally incapacitated; therefore, communities protected the mentally impaired and disabled from harming themselves or others and beyond this did little to help or hinder them in society.

* * *

The distinction in Roman works between those mentally afflicted persons who raged and those who were passive continued throughout the Middle Ages in England, as did the idea that there was a qualitative difference between those with their condition from birth and those who became afflicted later. When a mentally disabled individual was described as inheriting land or being taken advantage of by relatives or lords, most English records would describe him as *non compos mentis* in the thirteenth century, and later in the fourteenth and fifteenth centuries as an *idiota* or *fatuus*. In contrast, if such an afflicted per-

⁴¹ 1 Samuel 21. 12–15.

⁴² '(13) et inmutavit os suum coram eis et conlabebatur inter manus eorum et inpingebat in ostia portae defluebantque salivae eius in barbam (14) et ait Achis ad servos suos vidistis hominem insanum quare adduxistis eum ad me (15) an desunt nobis furiosi quod introduxistis istum ut fureret me praesente hicine ingreditur domum meam'; *Biblia sacra*, ed. by Weber, p. 401.

⁴³ Philbeck, '1–2 Samuel', p. 65.

son were violent or ill, he would be labelled a *furiosus* or another such term (for example, *demencia*, *freneticus*, *lunaticus*) that indicated the state or quality of his unsettled mind, and possibly give an explanation for any uncontrolled actions.

In medieval society, the image of those with mental afflictions in ecclesiastical works was two sided. On the one hand, mental incapacity might be the illness of an innocent under the protection and grace of God. On the other hand, mental affliction could be God's punishment upon the individual for a sin against Him or His representatives. The idea of two opposing potential causes for mental collapse in the medieval imagination complicated the treatment of the mentally incapacitated throughout the Middle Ages.

LEGAL OPINIONS OF MENTAL ABILITY

It is the custom to appoint guardians for the lands and persons of idiots and fools (*ydiotarum et stultorum*) for the whole of their lives, and this has been lawful and permissible because of their inability to rule themselves, being adjudged ever to be, as it were, below full age. But because they were suffering many disinheritings by reason of such wardships, it was provided and generally agreed that the king should have the perpetual wardship of the persons and inheritance of such idiots and fools from whatsoever lord they held their lands.¹

A change took place during the reign of Henry III from local, familial, and lord-based control of mentally incapacitated landholders and their properties, to royal prerogative wardship. Early in the thirteenth century, there were a few occasions on which the king found himself the guardian of a mentally incapacitated landholder, most of who were his own vassals. Later in Henry's reign, the crown took ever more invasive actions into the affairs of the mentally incapacitated all across England. An aggressive search and seizure of mentally incapacitated property holders followed under Edward I. Legal commentators and theorists confirm a 'recent' regulation, perhaps penned in part by Robert Walerand, a justice and confidant of Henry III. Certainly, the concept of the prerogative right of the crown to act as guardian to the mentally incapacitated was stated quite clearly in the Year Books of Edward II. This chapter examines both prominent as well as lesser-known commentaries on law, other indicators of legal precedent and practice such as the *Prerogativa regis*, and the legal status of the mentally incapacitated in twelfth- and thirteenth-century England.

¹ *Fleta*, ed. and trans. by Richardson and Sayles, bk I, cap. 11, ¶ 8 (I, 21).

Twelfth-Century Legal Categories of the Mentally Incapacitated

During the ‘renaissance’ of the twelfth century, a restructuring took place in English common law that incorporated a new way of organizing law, including those laws regarding mentally incapacitated heirs. With the arrival from Bologna of the *Corpus juris civilis* to England with Vacarius in 1149, a flurry of activity swirled around the legal community of London and Oxford² as the implications and potential of Roman precedent and organizational methods were considered. *Glanvill*, written during the reign of Henry II (1154–89), was the first successful attempt to apply Roman methods of organization to common law; a masterful undertaking, it included the new legal changes brought about through use of the *Digest*.³ Although *Glanvill* did not concern himself with a subject as insignificant as the mentally incapacitated,⁴ his treatise heavily influenced the English legal profession becoming the authoritative work on law until the work of ‘Bracton’ in the early thirteenth century.

The ‘rediscovery’ of the *Digest* of Justinian’s *Corpus juris civilis* in the mid-twelfth century meant the rediscovery of organized precedent law, which led to the rethinking and reorganizing of law throughout Europe, including laws on

² Vacarius’s *Liber pauperum* became the textbook on Roman law in England. Appearing about the same time as *Glanvill* (1187–89) or at least by 1190, it was out of use by the 1230s, though Vacarius continued to teach Roman law at Oxford. The *Liber pauperum* was a condensed version of the essence of the *Corpus* without the bulk. It was thought that if a student knew Vacarius’s Roman law, he knew enough to work on ecclesiastical law. Students of common law also read Vacarius, and it has been postulated that the author of *Glanvill* may have read an early version. Boyle, ‘The Beginnings of Legal Studies at Oxford’, pp. 107, 114–118, 126; Taliadoros, *Law and Theology in Twelfth-Century England*; Stein, ‘Vacarius and the Civil Law’; Southern, ‘Master Vacarius and the Beginning of an English Academic Tradition’; Kuttner and Rathbone, ‘Anglo-Norman Canonists of the Twelfth Century’, esp. p. 323; Richardson and Sayles, *Law and Legislation*, p. 79; and Vacarius, *The ‘Liber Pauperum’*, ed. by Zulueta.

³ This came about in the period of rapid legal growth following the death of Thomas Becket (1170) at which time many categories, if not laws, were adopted from Roman law into English legal thinking. Duggan, *Canon Law in Medieval England*, iv. 140, xi. 363.

⁴ Recently the identification of Ranulf de Glanvill as the author of the work that bears his name has come into question. For more information see: Glanville, *De legibus et consuetudinibus regni angliae*, ed. by Woodbine, also called *Tractatus de legibus et consuetudinibus regni angliae* in the first editions (1554?, 1604, 1673, etc.). R. Turner looks in detail at the suggestions for the possible authorship of *Glanvill*, including Ranulf de Glanvill, Godfrey de Lucy, and Hubert Walter in Turner, *The English Judiciary in the Age of Glanvill and Bracton*, pp. 1, 33, 38, 97–98. See also: Stein, ‘Vacarius and the Civil Law’, p. 125; and Richardson and Sayles, *Law and Legislation*, pp. 78–79.

the mentally incapacitated. Many works on canon law, notably the *Decretum Gratiani* (c. 1140s), included some of the *Digest* concerning the custody of the mentally incapacitated.⁵ Most of these accepted the Roman division of guardians into curators and tutors. The *Decretum* included such divisions as: 'madmen and madwomen' (*furioso, furiosa*), 'foolish men and women' (*fatuo, fatua*), and 'prodigals' (*prodigo*).⁶ Other ecclesiastical canonists and scholars debated the classification of the mentally incapacitated as it pertained to the *cura animarum*, the care of souls.⁷

Gratian's reworking of ecclesiastical law brought Roman solutions to the problem of organizing the discordant canons, including those concerning mental deficiency. The *Decretum Gratiani* was followed by other works on canon law including, *Quinque compilationes antiquae* (1187–1226) and the *Decretales Gregorii IX* (1234). Some differences between civil and ecclesiastical law do appear, such as the stipulation in later Roman law that monks could not serve as tutors; whereas, in medieval canon law they could. Other than these types of minor differences, the Roman model stood as the accepted model for guardians and their wards.⁸

Gratian approached law quite logically with method and precision in his organization and categorization. He picked up many of the Roman ideas about care and custody of the mentally incapacitated without needing to alter them significantly because from the time of Justinian they had already been brought into conformity with Christian doctrine. Legally, the mentally incapacitated were unable to represent themselves, and Gratian included information and laws on representation for them by tutors and curators. For example, Gratian paraphrases Justinian's *Digest* when he speaks of pleading on behalf of *fatuo*, et cetera:

Some persons are permitted to plea on behalf of themselves, for others it is prohibited to make claims, [and] unless bold, the tutor of a youth or the curator of an adolescent will have no affect, but they are administratively necessary [...] if not [working well] on behalf of themselves and on behalf of certain persons who are not able to make claims, then they [the tutors or curators] must make full restitution. It is also permitted for them to make claims on behalf of parents, on behalf of protectors, [...] brothers and sisters, [...] students, insane persons, fools, mutes,

⁵ Van De Wiel, *History of Canon Law*, p. 99; and Baker, *Monuments of Endlesse Labours*, esp. chap. 1, pp. 1–7.

⁶ Gratian, *Decretum*, ed. by Migne; *Corpus iuris canonici*, ed. by Friedberg.

⁷ *Quinque compilationes antiquae*, ed. by Friedberg; and Gregory the Great, *Decretales*.

⁸ See: Helmholz, *Canon Law and the Law of England*, chap. 12, but especially pp. 215, 219–20.

the deaf, prodigals [spendthrifts], and children ('pupillo, pupilla, furioso, furiosa, fatuo, fatua, muto, surdo, prodigo, et adolescente').⁹

Gratian included the Roman idea that a guardian could be held liable for poor management of his trustee's affairs and that a guardian could speak legally for his charge. On mentally incapacitated adults, the *Decretum* says that, 'one who is afflicted with madness' could not be called as a witness.¹⁰ One canon in the *Decretum* takes from the *Corpus iuris civilis* that, 'not only are tutors to be experienced [at legal representation], but also curators, not just for pupils but adults, but what is more, for madmen (*furiosi*), the deaf, the mute, and other persons to whom tutors and curators were given by the old law'.¹¹

One canon, working on the decretals, described marriage in legal terms as a contract and that, since a *furiosus* could not make a contract, he or she could not marry. 'Neither madmen (*furiosus*), nor madwomen (*furiosa*) are able to enter a marriage contract, but if they were already contracted, do not separate [them]'.¹² Those mentally incapacitated who had been married before becoming afflicted, Gratian would not have removed from marriage. It does not say what he would do if it were otherwise, and there is some suggestion that this passage might have been speaking against an old Salic law that granted divorce in the case of insanity.¹³ Marriage, though not a sacrament until the thirteenth century, was certainly being defended in the twelfth as important and binding.

The debate over the care of souls for the mentally incapacitated was covered in part in the *Quinque compilationes antiquae* and the *Decretales Gregorii IX*; furthermore, this debate continued for some time and other writings emerged in reaction to and in support of the statements in these works and others in letters and university discussions. When Thomas Aquinas (1225–74) divided the insane into four groups reminiscent of Roman categories: insane from birth

⁹ Justinian, *The Digest*, ed. and trans. by Watson, causa III, quest. 7, chap. 2, ¶¶ 2–3. Also: *The Civil Law*, trans. by Scott; and *Corpus iuris civilis*, ed. by Krueger and others, II: *Codex Iustinianus* (1959). See also: *Corpus iuris canonici*, ed. by Friedberg, Decreti II, causa III, quest. VII, chap. 2 (I, col. 525) and *Institutes*, I. 3, § 139.

¹⁰ *Corpus iuris canonici*, ed. by Friedberg, Decreti II, causa XVI, quest. III, chap. 15, pt 8, § 5 (I, col. 795).

¹¹ *Corpus iuris canonici*, ed. by Friedberg, Decreti II, causa XVI, quest. I, chap. 40 (I, col. 772).

¹² *Corpus iuris canonici*, ed. by Friedberg, Decreti II, causa XXXII, quest. VII, chap. 26 (I, col. 1147).

¹³ See: *Corpus iuris canonici*, ed. by Friedberg; *The Civil Law*, trans. by Scott; and *Corpus iuris civilis*, ed. by Krueger and others, II: *Codex Iustinianus*.

with lucid intervals and without lucid intervals, those who lost their reason later, and those deficient in reason but who could appreciate the Sacrament, the debate seems to have slowed.¹⁴ Aquinas concluded that those who have no lucid moments should be baptized (and probably had been in most areas as infants), while those who have lucid moments, and were not baptized as infants, should be asked their will at their times of lucidity. Religiously, if the mentally incapacitated had lucid moments, they could, in the medieval period, choose to receive all the sacraments including baptism, ordination (with the authorization of the bishop, of course) and, after it became a sacrament, marriage.

Early English legal writers made several distinctions in categories of mental ailments, duration, and consistency reminiscent of those in canon law and the ecclesiastical commentaries. English authors indicated, as did Roman authors before them, that while sane, the occasionally mentally impaired person could participate in society, and so categorically culling those persons out as a separate legal group made practical sense. Other distinctions became evident as writers attempted to describe the characteristics and qualities of incapacity. The English legal community created — as other such groups did throughout Europe — a terminological distinction between someone born mentally impaired and someone who became mentally incapacitated later.¹⁵ Medieval English society emphasized a qualitative difference between these two groups. They acknowledged the potential spiritual difference of being born an innocent and becoming mentally incapacitated as a form of punishment or protection from God, as described in many ecclesiastical stories. And, while English authors copied the Roman textual difference between *furiosus* (a person with unexplainable rage) and a *non compos mentis* (a person without mental capacity who was passive), these authors did *not* continue to use the terms *furiosus* and *non compos mentis* in quite the same way. They, instead, used *furiosus* to only mean raging, and *non compos mentis* to indicate a passive mentally incompetent individual. In order to discuss persons born in a state of mental incompetence, English medieval authors either used *non compos mentis* or other terms, including *fatuus* to indicate a ‘foolish person’ or *idiota* to describe an individual with low mental faculties, combined with *naturalis*. Later in medieval England, the term *idiota* became so commonly used to indicate those persons with congenital mental deficiencies, that *naturalis* was no longer necessary.

¹⁴ Aquinas, *Summa Theol.*, III, q. 68, a. 12; in Pickett, *Mental Affliction and Church Law*, p. 51.

¹⁵ Irina Metzler established the division between impairment and disability in Metzler, *Disability in Medieval Europe*.

Thirteenth-Century Law Concerning the Mentally Incapacitated

The author(s)¹⁶ of *De legibus et consuetudinibus Angliae*, more commonly called simply *Bracton*, reorganized and re-categorized law in England based in part on these new models of law by around 1240. *Bracton* included laws concerning the mentally incapacitated.¹⁷ Though a product of the law rapidly becoming its own profession and a summary of opinion, not law itself,¹⁸ this widely used reference work brought information from the canon and Roman traditions concerning the mentally incapacitated into sync with English legal traditions and thought.

Bracton contains several chapters on legal issues pertaining to the mentally incapacitated using the division between *furiosus* and *non compos mentis*. The author kept the Roman distinction between people who were ‘mad (*furiosus*) [...] or of unsound mind (*non sane mentis*)’, so that he knows not how to understand or has no understanding at all.¹⁹ In a discussion on land transactions, *Bracton* states that a plaintiff who ‘is not of sane mind (*non sane mentis*), that is, insane (*furiosus*)’ could not enter into legal transactions because of their lack of understanding.²⁰ The author in both of these passages, but especially in the second example, used the terms *non sane mentis* and *furiosus* as if interchangeable. The author used the same terminology that in Roman texts represented

¹⁶ Most widely accepted as Henry Bratton (Bracton). He was most certainly the compiler, if not the author of some of the *De legibus et consuetudinibus Angliae* text. Brand, ‘Bratton, Henry of’, and Brand, ‘Thornton, Gilbert of’; Turner, *The English Judiciary in the Age of Glanvill and Bracton*, pp. 234–37; and G. O. Sayles, ‘Introduction’, in *Fleta*, ed. and trans. by Richardson and Sayles, IV, p. xv.

¹⁷ Because additions had been made over many years, possibly by multiple authors, the text of this ongoing and unfinished manuscript was problematic, but it proved so helpful to the legal community that it was copied and used with little editing. As the only good reference for English law in the late thirteenth century, it was at once adopted as authoritative and within ten years it had become indispensable to the legal community, even with its limitations. See especially, Brand, ‘Bratton, Henry of’.

¹⁸ The same relationship held true for Gratian’s *Decretum* and canon law. Gratian’s text was not law, but was used by many who studied church law.

¹⁹ Bracton, *De legibus et consuetudinibus Angliae*, fol. 420^v, lib. v, cap. 20, ¶¶ 1–2 (Bracton, *De legibus et consuetudinibus Angliae* ed. by Woodbine, IV, 308). Compare with *Institutes*, I, 23, §§ 3–4.

²⁰ The author(s) of *Bracton* began this passage in the singular and then switched to speaking more generally in the plural. For the sake of clarity in English, the translation here continues in the singular. Bracton, *De legibus et consuetudinibus Angliae*, fol. 420^v, lib. v, cap. 20, ¶¶ 1–2 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, IV, 308); *Institutes*, III, 19, § 8.

opposite categories of raging and passive mental afflictions. Throughout the work, however, the author seemed to use one as a subset of the other, though he consistently associated the concept of lucid intervals with the term *furiosus*.

Bracton used other terminology to describe the mentally incapacitated aside from *furiosus* and *non compos mentis*. In one passage, the author listed terms of insanity with their antonyms, giving the reader an indication of the concepts behind his definitions:

We must see to whom the right may descend. It is clear that it is to children, heirs in the descending right line, whether males or females, present or absent, of full age or within age, whether to *idiotae* as well as those who have discretion, whether to *mente capti* as those of sound mind, which may be said of the *furiosi*, whether they enjoy lucid intervals or not.²¹

As indicated by this passage from *Bracton*, *idiotae* were persons without discernment, the opposite of ‘those who have discretion’. The *mente capti* were those of unsound mind. Less clear without an opposing description, the *furiosi* had at least the potential for lucid periods. Additionally, in the work called *Bracton’s Note Book* there is a reference to a woman who was ‘out of her mind, demented’ (*demens*),²² and a man who ‘has no control [of his person]’ (*sui non fuit compos*).²³ None of these were medical definitions nor were they intended as such, but they do provide clues for getting closer to an understanding of what at least one medieval English legal commentator thought when he heard or used one term over another.

Bracton adds a comment clarifying a rule about entry into land, which would also be valid for a feeble-minded person who received his lands as an inheritance:²⁴ ‘A fool (*fatuus*) may acquire [land], provided he has understanding (*discretionem habet*) in some matters.’²⁵ A fatuous person, from the description in *Bracton* of a young man giving away his inheritance to his younger

²¹ Bracton, *De legibus et consuetudinibus Angliae*, fol. 375^v, lib. v, cap. 6, § 7 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, IV, 177).

²² Bracton, *Notebook*, ed. by Maitland, III, no. 1908 (p. 678).

²³ Bracton, *Notebook*, ed. by Maitland, III, no. 1189 (p. 205).

²⁴ Bracton, *De legibus et consuetudinibus Angliae*, fols 14^v–15^r, lib. II, cap. 5, § 9; fol. 323^v, lib. IV, cap. 5, § 10 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 61 and IV, 36). See also: Bracton, *De legibus et consuetudinibus Angliae*, fol. 150^r, lib. III, cap. 31, § 1 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 424).

²⁵ Bracton, *De legibus et consuetudinibus Angliae*, fol. 420^v, lib. v, cap. 20, § 1 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 308).

brother, seems to be someone who lacked common sense. One can only speculate as to whether or not that included minor mental and emotional impairment, or if the author meant something akin to the Roman *prodigi*, 'prodigal'. Other contracts were not to be made with the mentally incapacitated; no 'dealings with such persons [ought to] hold good, during their madness' (*furor*),²⁶ unless a mentally incapacitated person entered into a contract while lucid in which case the contract would be binding.

The author of *Bracton* defined his categories of mental incapacity, taking into account the qualities of rage and passivity, along with the duration and consistency of the affliction. His terminology might be different from that of used in Roman law, but the author clearly had distinctions in mind. He also commented that the mentally incompetent could not fully participate in society; and yet, they, much like children, had rights in their inherited lands. There are also passages in *Bracton* that address the idea of tutors and curators assigned to mentally incapacitated persons by lords²⁷ and of communities assigning a few incapacitated persons 'keepers' as well as the king overseeing the assignment of a handful of 'custodians' and 'guardians' to mentally incapacitated persons.²⁸

Legal Opinions as Edward I Takes the Throne, 1272–1307

Throughout the thirteenth century, though Henry III used his prerogative powers to place mentally incapacitated landlords in wardship, the purpose for this action was not documented until the end of his reign in the *Prerogativa regis*. There the king claimed to have an interest in the lands of all mentally incapacitated persons that superseded the rights of the lord or the family; and whether the *Prerogativa regis* was composed at the insistence of Henry in his last years or Edward in his first few, does not ultimately matter. Henry had already begun placing mentally incapacitated persons into royal wardships, and this documentation was only a confirmation of his action. As Edward came to the throne, the crown began to appoint guardians regularly to protect mentally disabled or incompetent landlords rather than allowing lords of mentally incapacitated vassals to control the lands or for family members or neighbours to take advantage of mentally incapacitated heirs.

²⁶ Bracton, *De legibus et consuetudinibus Anglie*, fol. 420^v, lib. v, cap. 20, ¶ 1 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 308).

²⁷ See Clark, 'Social Welfare and Mutual Aid in the Medieval Countryside', p. 390.

²⁸ Searle, *Lordship and Community*, p. 391, see esp. n. 12.

Sometime during the first half of the reign of Henry III, the legal treatment of the mentally incapacitated changed, mostly as put forth in the later *Prerogativa regis*.²⁹ Landholders of late thirteenth-century England, whom the king or his representatives judged to be mentally disabled, began to have royal guardians assigned to them since they and their inheritance now came under the protection of the king.³⁰ The alteration of the custom from family and lords arranging for the care and wardship of the mentally incapacitated to royal care and custody, gave Henry III, and the crown generally, potentially quite lucrative and numerically more wardships with which to reward, pay, or extend credit to family and friends.

Legal commentaries appearing in the final quarter of the thirteenth century used *Bracton* as a model, and also mention 'new' rules for mentally disabled property holders. Following the quarrels between the barons and the crown, new legislation had put *Bracton* somewhat out of date. The new commentaries — *Brevia placitata* and Hengham's *Summa magna*³¹ being among the first — surfaced in the 1260s without mentioning the mentally incapacitated. *Thornton*, written just after Edward I became king in 1272, mentions wardship only in conjunction with underage children and not the mentally incapacitated.³² The Year Books, or at least a proto-version of what later became the Year

²⁹ The *Prerogativa regis* is in *Statutes of the Realm*, ed. by Luders and others. The relevant chapters are 11 and 12. See Chapter 4 for more information on the *Prerogativa regis*. As a comparison, see: *Institutes*, I. 23, § 3. Roman law had been taught at English universities since the mid-twelfth century. See Taliadoros, *Law and Theology in Twelfth-Century England*, pp. 35–42.

³⁰ Wardship was not new in England; children and women as heirs had long been given royal guardians, but mentally incapacitated heirs had fallen under the jurisdiction of their families and lords. See Waugh, *The Lordship of England*, esp. pp. 165–69.

³¹ For information on *Brevia placitata*, see Brand, 'Courtroom and Schoolroom', pp. 152–53, and Brand, *The Origins of the English Legal Profession*, p. 48; and Lyon, *A Constitutional and Legal History of Medieval England*, p. 334. Hengham did not mention the mentally incapacitated even though he did briefly discuss guardians of minor heirs. For his information on wardship, see esp. the final chapter ('De warantia carte') of Ralph de Hengham (Sir Radulphi de Hengham, chief justice to King Edward I), *Summae: Magna Hengham & Parva* (cited as Hengham, *Summae*), which is bound behind John Fortescue (Sir Iohn Fortescue), *De laudibus legum angliae* in the 1616 Companie of Stationers edition. Hengham's copy begins after p. 56 of Fortescue and restarts pagination. See also: Hengham, *Summae*, ed. by Dunham. For more information on Hengham see: Whitwell, 'The Libraries of a Civilian and Canonist', p. 396; and Brand, 'Hengham Magna'.

³² Cambridge (MA), Harvard Law School Libr., MS 77: Gilbert de Thornton (c. 1235–95), *Summa de legibus* (England, c. 1400). For more information on Thornton's *Summa de legibus*, see: Plucknett, 'The Harvard Manuscript of Thornton's *Summa*'; Thorne, 'Gilbert de Thornton's

Books, began to appear in the 1280s; they include several entries about land issues with regard to the mentally incapacitated.³³ *Fleta*, *Britton*, and *The Mirror of Justices*,³⁴ all emerging in the 1290s, have various treatments of the mentally incapacitated around the theme of royal wardship. Collectively, these later documents summarize the changes during Henry III's reign regarding the mentally incapacitated and wardship; a direction Edward I intended to continue.

The Prerogativa regis

One of the major touchstones of royal authority in general, but specifically over the mentally incapacitated, was the *Prerogativa regis*.³⁵ The original document and the words — royal prerogative — did not mean quite the same thing to a medieval listener as to an early modern one. Royal prerogative would later be the authority — *auctoritas* — to step around the law. The *Prerogativa regis* was law, or at least a list of guidelines pertaining to certain laws. The importance of the *Prerogativa regis* was its symbolic capacity to establish the crown's ability to exert its rights into the lives, families, and properties of the mentally incapacitated.

The *Prerogativa regis* is in *The Statutes of the Realm*, volume I. An interesting debate surrounds this curious document as to the type of document it is and as to the date of its composition, both of which continue to be in question. And, although it has not been precisely dated, it seems to have been written sometime near the end of the reign of Henry III or in the first several years of the reign of Edward I.

Most local communities knew of the shift in the practice of guardianships for the mentally incompetent sometime around 1250. Probably they knew from notifications sent to all sheriffs in a format, similar to that of the *Prerogativa regis*, outlining several policy changes, which in this case included changes concerning the mentally incapacitated. Although trial and case records

Summa de legibus'; Brand, 'Courtroom and Schoolroom', pp. 162–63; and Lyon, *A Constitutional and Legal History of Medieval England*, p. 334.

³³ '[A]s early as 1285, [...] some one was endeavouring to report in the vernacular — that is, in French — the oral debates that he heard in court. In 1293 a fairly continuous stream began to flow. This surely is a memorable event'. F. W. Maitland in the introductory essay to the *Year Books of Edward II*, ed. by Maitland and others, I, pp. xiv–xv.

³⁴ *Britton*, ed. and trans. by Nichols. *Fleta*, ed. and trans. by Richardson and Sayles. *The Mirror of Justices*, ed. by Whittaker. Further information on all three of these texts appears later in this chapter.

³⁵ See McDonagh, *Idiocy*, p. 81.

mention the mentally incompetent with some regularity after 1250, no actual laws addressed persons with this type of condition directly. The one, semi-legal document that mentioned the legal status of those with mental conditions came to be called the *Prerogativa regis*. It is labelled here 'semi-legal' because it reflects legal changes of the late thirteenth century and was later held up as law.

The *Prerogativa regis* is not a statute *per se*, and although treated in part like one since the sixteenth century, it will not be treated as such here. The *Prerogativa regis* continues to appear in some collections of statutes among the 'statutes of uncertain date'. It did appear with the collection of legal charters and statutes for many years, yet it is not written like either a charter or a statute and is often no longer included. Yet, most scholars would agree that the *Prerogativa regis* is not, nor ever was intended to be, a statute. Still, statutes were not a clearly defined body of documents in the thirteenth century and at least chapter eleven of the *Prerogativa regis*, which deals with 'born fools', remained a part of English law until the end of the twentieth century. Chapter twelve, also dealing with the mentally incapacitated, was only officially repealed in the mid-twentieth century.³⁶ Most likely, the *Prerogativa regis* was a type of memorandum with information about changes in practice and procedure sent out to county officials and was collected among the legal papers of the thirteenth and fourteenth centuries, only later to be published along side them as if law. The dating of the *Prerogativa regis*, as of yet not exact, can be narrowed to at least five years, those years surrounding the change in rulers of 1272 from Henry III

³⁶ Some of both Chapters 11 and 12 were lost in the Lunacy Act of 1890. Chapter 12 of the *Prerogativa regis*, dealing with 'lunatics', was only officially repealed in 1959 in Chapter 72 of the Mental Health Act. This act was, in turn, amended by the Inquiries Act of 2005 (Chapter 12). Chapter 11 of the *Prerogativa regis*, which deals with 'born fools', in part remained active in English law until 1961, when it was repealed in the Crown Estate Act of Elizabeth II. The Inquiries Act (2005) finally changed 'next heir' to 'nearest relative'. Modern British lawbooks point out on the subject of insanity that these chapters of the *Prerogativa regis* were only completely revoked as of 1961 (see Turner, Salter, and Deahl, 'Mental Health Reform Act'). The language left over from their effects and other traces of what once were medieval ideas, disappeared in 2005. Therefore, even though the *Prerogativa regis* was probably not intended as a statute, it has been treated as one. Since common law was for the most part only oral, it represented the actual legal policies, probably in the Middle Ages and definitely later in English history. Trevor Turner and others writing on the Mental Health Reform Act hoped to see more authority given to the 1983 Mental Health Act Commission, rather than allowing medical personnel to make all decisions; they wanted to see a balance, I gather, between courts and the medical profession. See also: Halsbury, *Laws of England*, ed. by Hailsham, p. 576, paragraph 1201, 'Historical Development of Mental Health', esp. n. 1.

to Edward I, allowing for an estimation of the notification of the change in the royal practice concerning wardship of mentally incapacitated landholders.

Confusion over the meaning, purpose and date of the *Prerogativa regis* has a long history and because of its direct link to the change in the treatment of the mentally incompetent, it bares elucidation. E. F. Henderson published a short, two-page article in October of 1890 on the *Prerogativa regis*. He explained that this ‘statute’ had appeared in all previous printed copies of the *Statutes of the Realm* with the statutes for the seventeenth year of Edward II’s reign; however, in the latest edition of the *Statutes* from 1810, it was grouped with others of ‘uncertain date’ between Edward II and Edward III.³⁷ All of these ‘statutes’ included footnotes indicating that they belonged somewhere in the reigns of Henry III, Edward I, or Edward II. Using a passage in the *Prerogativa regis* concerning ‘the laying waste of a felon’s property’, Henderson made the argument that the statute must have belonged to the reign of Henry III because ‘it seems probable that Edward I’ would have done away with such a ‘romantic idea.’³⁸

In response to Henderson’s article, the following year F. W. Maitland published a fuller article on ‘The “Praerogativa Regis”’, arguing that this document most likely originated early in the reign of Edward I.³⁹ He concluded that this was not a statute at all but rather a ‘tract written by some lawyer,’⁴⁰ whom he identified as Robert Walerand. Although Maitland briefly addressed the significance of other chapters, he centred his discussion on the eleventh and twelfth chapters that concern the king’s rights regarding lands of the mentally incapacitated. His main evidence was the mention of the *Prerogativa regis* in two

³⁷ Originally the *Prerogativa regis* had been included with the statutes of the seventeenth year of Edward II. The statutes had been loosely grouped by regnal year or by topics, but in the nineteenth century the statutes were reorganized by date of official acceptance under each year of a king’s reign. The *Prerogativa regis* and other questionably dated articles came to be grouped together at the end of the collection of Ancient Statutes. It began to be printed, along with other ‘Statutes of Uncertain Date’, between the statutes for the reigns of Edward II and those of Edward III, whose reigns divided the *Antiqua Statuta* and the *Statuta Nova* in the *Statutes of the Realm*. The division of *antiqua* and *nova* continues to be used in modern editions of the *Statutes of the Realm*, but was created by lawyers during the reign of Edward III to distinguish between the statutes that were written before his reign and those specific to their king.

³⁸ Quote from Henderson, ‘The Date of the “Prerogativa Regis”’, p. 754. On the destruction of a felon’s property, see: Brand, *The Origins of the English Legal Profession*, pp. 1–30; Pollock and Maitland, *The History of English Law*, I, chap. 2, and II, chaps 4–6; and Henderson, ‘The Date of the “Prerogativa Regis”’, pp. 753–54.

³⁹ Maitland, ‘The “Praerogativa Regis”’, pp. 182–88.

⁴⁰ Maitland, ‘The “Praerogativa Regis”’, p. 183.

legal texts from about 1290 and an absence of mention from the earlier works, which he believed placed the document between about 1255 and 1290.

Maitland of the change in rulers in 1272, Maitland used the legal texts from the late thirteenth century of *Britton* and *Fleta*, both discussed at length below, to illustrate contemporary familiarity with the *Prerogativa regis*. Maitland used the section on the lands of 'natural fools' in chapter eleven as the cornerstone of his argument. He observed that Robert Walerand's heirs were both 'idiots',⁴¹ which gave him a specific interest in the matter of mentally incompetent heirs. Maitland backed his theory that Walerand authored the *Prerogativa regis*, in part and not illogically, because Walerand had potential motivation to create such a document. Two other possible connections exist between Walerand and the *Prerogativa regis*, which Maitland not too clearly points out: chapter fourteen involved the heirs of Walerand's uncle by marriage, John of Monmouth, while chapter fifteen pertained to the widow of Anselm Marshall whose lands were in Walerand's keeping. All of these circumstances tie Robert Walerand even closer to the overall text of the *Prerogativa regis*.

Maitland said the *Prerogativa regis* was a 'tract' written by the judge Walerand, who wanted to give his king the opportunity to take the rents from his lands via a wardship instead of having the lands of his heirs end up in the possession of his lords, some of whom were the crown's enemies.⁴² Judging from the date of the death of Robert Walerand in 1273, Maitland explained that the change took place in the last years of Henry III, written down in the early years of Edward I,⁴³ and by common consent, the king had taken up the task of wardship for all born idiots. All legal and administrative bodies of the thirteenth century knew that this was not a statute, according to Maitland.⁴⁴

⁴¹ Maitland, 'The "Praerogativa Regis"', p. 185.

⁴² Maitland, 'The "Praerogativa Regis"', pp. 183–85.

⁴³ Maitland, 'The "Praerogativa Regis"', pp. 186–88.

⁴⁴ Maitland blamed Edward Coke (1552–1634) for beginning the misunderstanding about the status of the *Prerogativa regis* as a statute in the seventeenth century as a result of the latter's incorrect translation of certain passages. Coke thought that the *Prerogativa regis* referred to a certain section of the *Statute of Marleborough* of 1267 (which Coke calls Marlebridge). Coke writes: 'Robert Walerand penned and preferred this Act, and by aid and common assent of the great Lords of the Realme, obtained to passe it for a Statute. This Robert Walerand was learned in the Laws of the Realm, and soon after this statute, died: His son and heir conveyed his Lands holden by Knights service to his son and heir apparent, being within age 21 years, rather trusting his Land in his son within age, then in himself, and died, his son being still within age; and this statute which Robert Walerand the grandfather had penned and preferred took first effect in the heir of his heir, as Britton reporteth'. Coke clearly mixed up the descent (Walerand's heirs

Several contemporaries named Robert Walerand as the author of the *Prerogativa regis*, and it is true that Robert Walerand's heirs would be the two sons of his brother, William — Robert and John — Robert Walerand's mentally incapacitated nephews. Although within a few years of Walerand's death his contemporaries wrote that he had authored or influenced a 'change' in the treatment of mentally incapacitated heirs, bringing them and their lands into the king's hands as his wards, the crown had already been doing so for many years.⁴⁵

Walerand's best opportunities to have written this would have been either while he was steward (1251–57), in which case it was written under the instruction of the king, or between the time of the Statute of Marlborough in 1267 when Walerand had returned to adjudication and his death in 1273. Prince Edward, later Edward I, who had been in effect controlling England since 1267, travelled to the Holy Lands in 1270, leaving Robert Walerand among others in charge of his affairs.⁴⁶ Edward became king in 1272 while still away, and Walerand died during Edward's absence, in 1273, the year after Henry III, his friend and Edward's father, had died. The *Prerogativa regis* was definitely known by the time of the commentaries of *Britton* and the *Fleta* of the 1290s. The authors of *Britton* and *Fleta* suggest that Walerand wrote the *Prerogativa regis* and that it took effect first with Walerand's heirs, though that was not true. This general statement abbreviating the king's policies went out to sheriffs and other officials of the king as instruction, common law being oral, with the king able to change his mind at his pleasure.⁴⁷

Though this document did not create law, the *Prerogativa regis* did explain current procedures and was probably a writ: an order issued by a court to sheriffs and other officials concerning the king's business. Even if Walerand wrote

were his nephews). However, the origin of his mistake is easy to understand considering that more than one of the records from the thirteenth century referred to Walerand's heir as his son. Coke most probably took his statement verbatim from *Britton*, that the lords passed the *Prerogativa regis* as a statute by common assent, meaning they were in approval of the document even if it was not originally written to be a statute. See Coke, *Institutes of the Laws of England*, pp. 109–10, and note.

⁴⁵ See Harding, 'Walerand, Robert'; McGlynn, 'Idiots, Lunatics, and the Royal Prerogative', esp. p. 3, and McGlynn, *The Royal Prerogative*.

⁴⁶ Harding, 'Walerand, Robert'.

⁴⁷ Please see: McGlynn, 'Idiots, Lunatics, and the Royal Prerogative', esp. p. 3; and McGlynn, *The Royal Prerogative*. For more on law and the medieval understanding of the law, see: *Boundaries of the Law*, ed. by Musson; *Political Culture in Late Medieval Britain*, ed. by Clark and Carpenter; *Conflict in Medieval Europe*, ed. by Brown and Górecki; and Drew, *Law and Society in Early Medieval Europe*.

the *Prerogativa regis*, it would have been not an authorship of law but a confirmation of royal practices begun in Henry's reign.⁴⁸ It was probably put together by a group of legal experts that included Walerand; and, though it is doubtful that he wrote it alone, it does seem highly probable that he had a hand in its conception, if not having drafted it himself.

Logically, the timing of Walerand as an author would work out. Walerand was one of the several lords in charge while Edward I was still in the Holy Lands after Henry died. The scenario that seems to make the most sense is that the magnates in charge of the country — temporarily without a king at home — wanted no questions asked about certain topics of current interest. They might have written down the latest procedures as they understood them, and which Henry had been using, so that the 'crown's' authority would not come under fire while the king was unavailable. Although this scenario is not all guesswork, any evidence remains in shadow since the original *Prerogativa regis* was lost. Walerand's signature and his writs and other pieces of work authored by him as judge offer no hints that something like this might emerge. Yet, Walerand was tied personally and professionally to several of the items named in the *Prerogativa regis*, lending credence to the statements in *Fleta* and other contemporary commentaries that suggest he had a hand in its authorship. This scenario would also recommend itself to an explanation of why some of the patent rolls announcing wardships of mentally incapacitated persons mention a 'recent change', without there being any great change in either procedure or law. The change might refer to this standardization or setting down on parchment of Henry's practices. With Edward in the Middle East, this scenario would also explain why several escheat records in the final few years of the thirteenth century say that wardships — over mentally disabled landlords — were being claimed for the crown 'by common assent'. If this writ, this statement of the crown's rights, was confused with a statute, it might be because the magnates felt the need to debate and publish it — coming to a 'common assent' — to avoid any challengers while

⁴⁸ Margaret McGlynn, as do many early modern historians, discusses the implications of the *Prerogativa regis* as it pertains to early modern England. The prerogatives of the crown in the later period were not quite the same as those which informed earlier readings of the document by medieval lawyers, authors of legal opinion, judges, and others. Even though written, it was not law and would have been considered fluid, bendable, if not out right breakable by the king or any succeeding king at his pleasure. McGlynn's findings that the Inns of Court discussed and debated the medieval *Prerogativa regis* are most interesting. This in part may explain why the *Prerogativa regis* ended up included in the *Statutes of the Realm*. From the late fifteenth century onward, the legal community considered it as if it were a legal text. See: McGlynn, 'Idiots, Lunatics, and the Royal Prerogative'; and McGlynn, *The Royal Prerogative*. See also n. 47 above.

the king was away. This would put the publication of the *Prerogativa regis* after the king's death in 1272 and before Walerand's in 1273.

Regardless, the crown officially claimed guardianship over all mentally incapacitated heirs during Henry III's reign, and chapters eleven and twelve of the *Prerogativa regis* were, in part, a summary of that change. If it were written between 1267 and 1273, this would explain why many of the letters patent appointing guardians to mentally incapacitated heirs in the final quarter of the thirteenth century and early in the fourteenth century mention that these heirs were being granted guardians 'as is the custom'⁴⁹ or 'pursuant to the statute';⁵⁰ these explanatory notes invoke the royal privilege while the new king was still away from England or when the king's rights were called into question.

The *Prerogativa regis*⁵¹ is eighteen chapters long and examines various rights of the king: miscellaneous concerns about general property rights, serjeanties, advowsons, the 'wreck of the sea', intrusions onto the king's lands, the ancient Norman lands, the lands of felons, the marriages of wards, as well as other specific issues about wardship including the lands of heiresses and widows, and the mentally incapacitated. This document impacts the study of the mentally incapacitated in England since chapters eleven and twelve, respectively, concern the inheritance and lands of the 'naturally foolish' (*fatui naturales*) and the mentally incompetent (those who were *non compotes mentis*), outlining the law that placed all those who were 'foolish' with inheritances of real property directly under the care of the king.

The passages concerning both types of mental incapacity were distinct, the first dealt only with the 'foolish' (*fatui*) and the second with persons who were *non compos mentis*. *Idiota*, as previously mentioned, came to mean someone born without sense, a term closely associated in most records with *fatuus*, here specifically qualified as 'natural'. In the *Prerogativa regis*, a person who was *non compos mentis* was one who became mentally incompetent later in life either

⁴⁹ This example is from 1279 when Richard de Umfraville was put into royal wardship. *Select Cases in the Court of King's Bench*, ed. by Sayles, 1: *Under Edward I* (1936), no. 38, p. 49.

⁵⁰ This example is from a later case in 1355 when John Heton became a royal ward, which demonstrates that the phrase was still in use in the mid-fourteenth century. Kew, TNA PRO, C 66/245, membr. 13; *CPR: Edward III, x: 1354–1358* (1909), 200–01.

⁵¹ The *Prerogativa regis* is in *Statutes of the Realm*, ed. by Luders and others. See also: Halsbury, *Laws of England*, ed. by Hailsham, p. 576, paragraph 1201, 'Historical Development of Mental Health', n. 1 especially; Brand, *The Origins of the English Legal Profession*, pp. 1–30; Pollock and Maitland, *The History of English Law*; and Henderson, 'The Date of the "Prerogativa Regis"', pp. 753–54; Maitland, 'The "Praerogativa Regis"', pp. 182–88.

through disease, a head injury, or other cause, and this person might have lucid periods. Chapters eleven and twelve are not long and read in their entirety:

11. ¶ The king will have custody of the lands of the naturally foolish, taking the profits of them [the lands] without waste or destruction, and will find for them [the foolish] their necessities from whomever's fee the lands be held; and after their death let him return the same [lands] to his right heirs, so that by no means will the lands be alienated by the same fools, nor will their heirs be disinherited.

12. ¶ Also he [the king] will provide, when anyone who previously had his memory and understanding, becomes not mentally competent, as certain people do from time to time; that the lands and tenements of the same be kept safely, without waste and destruction, and that themselves and their families will live and be sustained competently with the profits of the same, and the residue beyond their reasonable sustenance be kept for their use, to be delivered to them when they recover their memories; so that the aforesaid lands and tenements during the said time [of incapacity] be not alienated; and the king will not take possession of any of the profits for his own benefit. And if he [the mentally incapacitated individual] dies in such state, then the residue will be distributed for his soul, by the advice of the ordinary.⁵²

This clearly says that all of the mentally incapacitated, no matter if they were born in their conditions or later became that way, would have their lands confiscated by the king for the duration of their lives or incapacities, whichever ended first. During the time in which the king controlled them and their properties, they and their households would be, or were supposed to be, cared for and protected. The lands and other properties would then be returned intact to the rightful heirs next in the line of succession at the time of their mentally incapacitated relatives' deaths or to those formerly mentally disabled persons who might have recovered. Before the king's role as guardian to mentally disabled heirs in the thirteenth century, those who had land often fell subject to the

⁵² 'xj. ¶ Rex habet custodiam terrarum fatuorum naturalium, capiendo exitus earundem sine vasto & destruccione, & inveniet eis necessaria sua, de cujuscumque feodo terre ille fuerint, & post mortem eorum reddat eas rectis heredibus, ita quod nullatenus per eosdem fatuos alienentur vel eorum heredes exheredentur.

xij. ¶ Item habet providere quando aliquis qui prius habuit memoriam & intellectum, non fuerit compos mentis sue, sicut quidam sunt per lucida intervalla; quod terre & tenementa eorumdem salvo custodiantur, sine vasto & destruccione, & quod ipse & familia sua de exitibus earundem vivant & sustineantur competenter, & residuum ultra sustentacionem eorumdem rationabilem custodiatur ad opus ipsorum, liberand[um] eis quando memoriam recuperaverint; Ita quod predictae terre & tenementa, infra predictum tempus, non alienentur; Nec Rex de exitibus aliquid percipiat ad opus suum, & si obierit tali statu, tunc illud residuum distribuatur pro anima ejusdem, per consilium ordinariorum'. *Prerogativa regis*, pp. 226(a)–228.

whims of relatives or lords.⁵³ John Hudson points out that the ‘unsuitable’ were often skipped over and, ‘it may be that unsuitability generally had to be severe’, such as an individual with a severe and complete mental disability rather than incompetence, ‘if the heir was to be denied the inheritance’.⁵⁴ Hudson goes on to say that in situations where the first born was unsuitable as the heir, ‘preference for the younger line would have been popular both with the lord and with the family, who wished the inheritance to be held by a man who could maintain it. Only when unsuitability was questionable were disputes likely to arise between claimants and lord, and within the family’.⁵⁵

According to the *Prerogativa regis*, lands, titles, and other properties of the mentally incapacitated came into the hands of the king, who most often appointed a trustee, custodian, or guardian. In the twelfth and first half of the thirteenth centuries, mentally incapacitated persons had such a caregiver or guardian, most of whom were relatives or their lords. The thirteenth-century change from local control of mentally incapacitated landholders to royal control demonstrates a shift in royal power. Families or lords could no longer simply claim the lands of the mentally incapacitated or entrust those lands to whomever they wished; instead, the lands of these persons were protected and their family’s rights in the land upheld by the crown.

What this change meant for mentally incapacitated landholders was that rather than being recognized when convenient, the crown and the courts upheld and secured their claims when known. Importantly, the medieval English legal community of the thirteenth century classified the mentally incapacitated as legitimate heirs instead of looking at them as nonentities or less than human, as they supposedly did in some cases of persons with physical deformities.⁵⁶

⁵³ In a fifteenth-century example, a lord disinherited a woman because she was *fatua* in favour of her two younger sisters. San Marino, Huntington Libr., Archives of Battle Abbey, 1077–1780 (Court Rolls, Folder 25, Battle *Curia*, 1477). Also see: Searle, *Lordship and Community*, p. 391 n. 12 where she gives an overview of this document and the case in question.

⁵⁴ Hudson, *Land, Law, and Lordship in Anglo-Norman England*, p. 126. This seems to have been true in the twelfth and thirteenth centuries, but I have actually only seen two cases like this for the fourteenth and fifteenth centuries. In the first, the family is holding Irish lands and titles, and not English, and in the second, the family holds Scottish lands.

⁵⁵ Hudson, *Land, Law, and Lordship in Anglo-Norman England*, p. 126.

⁵⁶ See the quotes from *Bracton* and *Britton* following, such as where the author of *Britton* wrote that no ‘child which is born a monster — as one that has more than the proper number of members [...]’; *Britton*, ed. and trans. by Nichols, bk III, chap. 2 (II, 19). See also Friedman, *The Monstrous Races in Medieval Art and Thought*.

If the crown of the thirteenth century had simply placed the mentally disabled in the category of non-human, the rights of these individuals to inherit could easily have been overturned in favour of more competent heirs.⁵⁷ An argument of this type would have been simple to make, using the precedents set concerning those with severe physical impairments.⁵⁸

The king no longer sanctioned the disinheritance of mentally incapacitated heirs or the haphazard assignment of custodians by lords or relatives. More importantly, he and his chosen guardians made a profit from this kindness. As chapter eleven of the *Prerogativa regis* explains, the king may take the profit out of the lands of those born mentally incapacitated. He placed royal guardians in control of these landholders and their lands who gained somewhat from the profits out of the land since the king allowed them a stipend. Sometime these guardians took more than their fair share and almost always the crown profited from its ward's lands.

Legal Commentaries, 1272–1307

Fleta, *Britton*, *The Mirror of Justices*, and the Year Books, all appear in the reign of Edward I. Although it was not the compilers' or writers' original aim, an understanding of the similarities and differences in these documents helps to clarify the perception and treatment of the mentally incapacitated at the turn from the thirteenth century to the fourteenth. Legal commentaries of the 1290s expound upon wardship and responsibilities of the mentally disabled in detail.

⁵⁷ Competent heirs were favoured occasionally in extreme circumstances, such as in the Maurice fitz Thomas, later Earl of Desmond in Ireland, who was favoured over his elder brother, Nicholas, 'an idiot'. Kew, TNA PRO, C 66/257, membr. 19; and *CPR: Edward III*, x1: 1358–1361 (1911), 246.

⁵⁸ See especially, Bracton, *De legibus et consuetudinibus Angliae*, fol. 438^{r-v}, lib. v, cap. 30, ¶ 10, and see also fol. 5^r, lib. i, cap. 7 on hermaphrodites, and fol. 5^v, lib. i, cap. 8, ¶ 1, on different types of men (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, iv, 361–62 and ii, 31). Although the author of *De legibus* said that he would not consider 'monstrous' those persons who simply had too many fingers or toes, or some other minor physical deformity, he does imply that some believed them to be. *Glanvill* does state that those persons could not inherit. The author of *De legibus* goes against this notion (at least seems to in most of the extant volumes that exist, in two he seems to say the opposite since 'non' is missing). He says that those with severe physical and mental disabilities should not be considered heirs: '[S]i æditus, non tamen fuit formatus ut homo sed ut monstrum' (if it was born, it had not the form of a man but of a monster); Bracton, *De legibus et consuetudinibus Angliae*, fol. 438^v, lib. v, cap. 30, ¶ 10.

Several significant similarities stand out when one compares *Fleta*, *Britton*, and *The Mirror of Justices*. First, the authors all try to categorize the mentally incapacitated using comparable terms, but terms with interesting differences either because of language (Latin or French) or because they were trying to make finer distinctions than the Latin terms provided in Roman law. Second, all of the authors were aware of a change from local to royal wardship in the practices regarding the custody of the mentally incapacitated. Third, all of these texts at least imply that this change had been accepted and that the king had gained control over lands in which he formerly had no power. And fourth, all three of these texts use terms such as ‘recently’ when referring to the time of the change of the wardship of the mentally incapacitated, though it might have been slowly gaining acceptance and usage for fifty years or more. Together, these commentaries provide an important link between the practice of law and the theoretical justification of law.

Fleta

The author of the *Fleta*⁵⁹ (c. 1290) and other legal commentators note that this type of wardship was new, that ‘recently’ the king had expanded the common law jurisdiction of appointing royal guardians to include ‘idiots’ and ‘fools’. *Fleta*’s author states that this provided better protection and care for these people. He writes that the king secured the age-old practice of guardianship over mentally incapacitated heirs, traditionally reserved for the lords, for himself.⁶⁰ The author also writes that the former system for mentally incapacitated heirs had been working quite well, and for some unnamed reason these wards had begun to suffer at the hands of their guardians. He says that there was a need for guardians — quoted in full at the beginning of this chapter — because the mentally disabled have an ‘inability to rule themselves’ and that they act as if children, ‘being adjudged ever to be, as it were, below full age’. As such, he points out, they were being disinherited; the king’s wardship of *idiotia* and ‘fools’ was ‘provided and generally agreed’ upon to keep these heirs from ‘suffering’. It was for this reason, according to *Fleta*, that the ‘king should have the perpetual

⁵⁹ See Chapter 4 for more on *Fleta* and other legal commentaries in which the authors expressed opinions on the mentally incapacitated involved in crime.

⁶⁰ Although the *Magna Carta*, the *Provisions (of Oxford)*, and the *Statute of Marlborough* limited some of the actions of the king, they did not deny his right to have wardships. *Magna Carta*, c. IV (p. 115); *Provisions (of Oxford)*, c. XVI, XV [*sic*], XVII (p. 10); and *Statute of Marlborough*, c. VI, VII, XVI, XVII (pp. 20–24).

wardship of the persons and inheritance of such idiots and fools from whatsoever lord they held their lands'.⁶¹ Either because of an abundance of complaints from disinherited heirs of mentally disabled landholders, or because the king saw an opportunity for income similar to that of underage wards, the crown claimed all mentally disabled heirs and their lands as royal wards bypassing all claims of the lord and the family to such persons and their holdings.

Fleta includes newly legislated information on idiots and waifs from the reign of Edward I.⁶² The text of *Fleta*, like that of *Britton*, clearly distinguishes a variety of terms for the mentally incapacitated, such as: 'fool' and 'foolish', or 'dumb' and 'idiot'. The author of *Fleta* understood *stultus* as someone without common sense, a naturally stupid person; while *inprudens* was someone not using his or her sense, a foolish person. The term *inprudens* indicated a poor choice by a sane individual, as in

and since a king should not always be armed with weapons but with laws, let him learn wisdom so that he may maintain justice [...] for there is honour and glory in the speech of the heedful and the tongue of the foolish (*inprudens*) is its overturning, and the governance of the heedful is stable and the wise king shall judge his people.⁶³

Fleta also distinguishes, as does *Bracton*, between the fool and the deaf and dumb, whom some modern scholars wrongly have said medieval society also thought of as 'mad' since they would not have been able to communicate in a normal fashion and could have appeared mentally incapacitated.⁶⁴ Yet from all indications, the ancient world as well as the medieval recognized and understood the difference. Those born deaf or dumb were more likely than the men-

⁶¹ *Fleta*, ed. and trans. by Richardson and Sayles, bk 1, cap. 11, ¶ 8 (1, 21).

⁶² The *Fleta* has always been dated sometime during late Edward I, about 1290, but internal evidence suggests that it was a work in progress compiled over at least several years. The author could have been working on it before 1285, but mentions briefly (three times) *Quia emtores*, which was a statute of 1290. It also has some passages that refer to differences in the laws concerning Jews and Christians that would not have been valid after July 1290 with the expulsion of the Jews. Yet, *Fleta* also refers to the chancellor of Scotland as the subordinate of the chancellor of England, which did not happen until 1296. These changes apparently were incorporated as new situations arose. *Fleta*, ed. and trans. by Richardson and Sayles, iv, 'Introduction', pp. xii–xiii, xvii. See also Plucknett, *Concise History of the Common Law*, p. 250; Plucknett dates the *Fleta* between 1290–92.

⁶³ *Fleta*, ed. and trans. by Richardson and Sayles, bk 1, chap. 17 (11, 37).

⁶⁴ Covey, *Social Perceptions of People with Disabilities in History*; Zilboorg, *A History of Medical Psychology*; and Tuke, *Chapters in the History of the Insane in the British Isles*.

tally incapacitated to be skipped in the line of inheritance and certainly could not acquire property since they could not consent in the required oral fashion. Legally a tenant who was deaf or dumb, 'a natural defect [...] as where he is by nature either deaf or dumb from birth',⁶⁵ could not hold property. A landholder who had become deaf or dumb later on was treated the same as someone who became mentally incapacitated, most likely because of the issue of property. According to *Fleta*, these persons should be given 'curators and tutors'. If they could no longer understand how to function in business, they could always act through their 'procurators'.⁶⁶

Fleta obviously echoes *Bracton* in the following passages 'On Gifts'. The original *Bracton* passage reads, concerning 'all those who do not have the full and free administration of their affairs':

They [the mentally incapacitated] cannot give because they cannot consent to the making of a gift, with the authority of their tutor or without it. Nor can one who is stone deaf (*surdus*), though it is otherwise if he is only hard of hearing; nor a true mute (*mutus verus*) who cannot speak, though, according to some, such persons may consent by signs and a nod. [...] [Neither] one who is a lunatic (*furiosus*) nor insane (*mente captus*) — unless he enjoys lucid intervals.⁶⁷

While *Fleta*'s modification of *Bracton* is:

They [the mentally incapacitated], however, will not be able to make a gift who do not have the general administration of their affairs (*generalem rerum suarum non habent administracionem*), such as minors, prisoners, the deaf and dumb (*surdi et muti*), those insane by nature (*naturaliter furiosi*) and mentally retarded (*mente capti*) — save when they enjoy lucid intervals.⁶⁸

The major difference in these two passages lies in their objectives: *Fleta* simply lists all those who could not make gifts while the selection from *Bracton* includes all of the exceptions to the rule, as had been done in the *Corpus*.⁶⁹

⁶⁵ *Fleta*, ed. and trans. by Richardson and Sayles, bk VI, cap. 40, (IV, 181). The commentaries all seem to agree on this point. Yet there were some deaf who did inherit. The emphasis then should be on the non-communication of some people. If they cannot indicate ability to carry out the duties associated with the property, they cannot inherit.

⁶⁶ *Fleta*, ed. and trans. by Richardson and Sayles bk VI, cap. 40, (IV, 181). There is also information on leprosy in *Fleta*. Lepers can continue to hold an inheritance, but they cannot receive one later which they had not held at the time they were found to be with the disease.

⁶⁷ Bracton, *De legibus et consuetudinibus Anglie*, fol. 12^r, lib.III, cap. 5, ¶ 5 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 51).

⁶⁸ *Fleta*, ed. and trans. by Richardson and Sayles bk III, cap. 3. (III, 6).

⁶⁹ *Institutes*, III. 19, esp. §§ 6–10.

In other passages, *Fleta* likewise follows the precedent of *Bracton* and the spirit of Justinian's *Corpus juris civilis*. For example, *Fleta* sets side-by-side the terms *furiosus* and *non compos mentis*, which might have been meant to continue the Roman division between raging and not raging, or more likely to reflect the English division between those born in a state of madness and those who became mentally unstable. Unlike *Bracton* or the *Corpus*, *Fleta* also juxtaposes the terms 'idiot' (*ydiota*) and 'fool' (*stultus*). When *Fleta* diverges from the normal Latin comparison of *furiosus* to *non compos mentis*, it seems to be emphasizing the medieval English division of duration (birth or later), for example those *naturaliter furiosi et mente capti*, those 'naturally [by birth] mad and mentally impaired'.⁷⁰ Compare *Fleta's* statement that, 'It is the custom to appoint guardians (*tutores*) for the lands and persons of idiots (*ydiotae*) and fools (*stultiorum*) for the whole of their lives',⁷¹ to Justinian's *Code*: 'It is customary for curators to be appointed for [...] insane persons (*furiosi*). [...] [And] the appointment of the curator shall not be considered as ended, but to exist as long as the insane person lives'.⁷² Both passages have the same sentiment of having a responsible party act for another who is not capable of being responsible. *Fleta's* author seems quite familiar with the passage from the *Code*, yet he chooses to change 'curator' to 'tutor'. Further, while the *Corpus juris civilis* and *Bracton* favour the term *furiosus*; the author of *Fleta* prefers *idiota*. The term *idiota* begins to take precedence in English administrative records over the term *non compos mentis* in the early fourteenth century slowly becoming the most commonly used term for the mentally incompetent in the action of English law: in writs, warrants, patent rolls, close rolls, etc.

Fleta compares the mentally incapacitated to 'brute beasts'. It explains, though, that when the mentally incapacitated no longer acted as 'beasts' — in other words, had sane intervals or became well — during those times, they could carry out contractual business. It reads:

⁷⁰ *Fleta*, ed. and trans. by Richardson and Sayles, bk III, cap. 3. (III, 6).

⁷¹ *Fleta*, ed. and trans. by Richardson and Sayles, bk I, cap. 11, ¶ 8 (I, 21).

⁷² *Code*, 5. 70. 1, 6. *Bracton* did not use the term *idiota*. The author preferred to use more description rather than single terms. Even in the work called *Bracton's Notebook*, there is great description, such as 'non est compos sue nec sane mentis'. *Bracton, Notebook*, ed. by Maitland, III, no. 1262 (p. 274). For other such examples in the *Notebook*, see: II, no. 354 (p. 293) and III, nos 1189 (pp. 205–06) and 1908 (p. 679). The *Notebook* of 'Bracton' might not be by the same author or for the purpose suggested as *Bracton* as suggested by Sayles, see: Turner, *The English Judiciary in the Age of Glanvill and Bracton*, p. 239.

An exception also lies for the tenant arising out of the person of the demandant if he is insane or mentally disturbed so that he does not know how to discriminate or has no *nous* at all. For such men are not far removed from brute beasts which lack feeling and reason, and dealings with such men during their madness ought not to be valid.⁷³

The author is quick to point out that insanity does not negate agreements made prior to the person losing his or her sanity and that as such persons need assistance in such matters, they should ‘be given curators and tutors by the lords of fees with the consent of parents and friends’.⁷⁴ Here *Fleta* still refers to the old laws in which the lord of the land had rights over all his tenants, contradicting the idea that the king had ‘perpetual wardship’; therefore, this text must either have been written before the change in practice by the king or have been copied from another earlier document. The author of *Fleta*, writing over a period of years, must not have brought his various segments into accord, which could account for some of his contradictions. Nevertheless, it is clear from other passages that, at some point during *Fleta*’s formulation, the king began taking charge of mentally incapacitated heirs and their property.

Fleta agrees with *Bracton* that the mentally incapacitated should be treated as children because of their limited mental capacity, with one stipulation: ‘provided that they were idiots and fools from birth — though not if they became so later — and that the king should marry them and preserve them from any derision’.⁷⁵ *Fleta*’s statement that the king should find marriages for the mentally incapacitated is quite astonishing. Not only does the author of *Fleta* state that the mentally incapacitated should be protected, and imply that they should try to have a child, an heir, but he also writes that the king should try to help them in this endeavour. After 1300, a similar statement appears in the Year Books of Edward II minus the suggestion that the king marry them off, noting that, ‘if an infant under age is a born fool, the King shall have a wardship all his life; but it is not so in the case of a lunatic’,⁷⁶ meaning that the lunatic might improve or that a lunatic had periods of lucidity and, therefore, did not need a guardian his whole life. The Yearbook statement does not say that the *lunaticus* should not be given a guardian at all.

⁷³ ‘Conpetit eciam tenenti excepcio ex persona petentis si fuerit furiosus vel non sane mentis ita quod discernere nesciat vel quod omnino nullam habeat dicrecionem. Tales enim non multum distant a brutis qui sensu carent et ratione, nec valere debet quod cum talibus agatur durante furore.’ *Fleta*, ed. and trans. by Richardson and Sayles, bk VI, cap. 40 (IV, 181).

⁷⁴ *Fleta*, ed. and trans. by Richardson and Sayles, bk VI, cap. 40 (IV, 181).

⁷⁵ *Fleta*, ed. and trans. by Richardson and Sayles, bk I, cap. 11, ¶ 8 (I, 21).

⁷⁶ *Year Books of Edward II*, ed. by Maitland and others, II, no. 53, p. 151.

Fleta includes a protection clause for the lords, granting that under no circumstances would they have lost their rights in the land permanently. It says that these rights remain with the lord, 'for example, to services, rents, wardships up to the age of lawful majority, according to the nature of the fees, to reliefs and such like', and that the king only temporarily suspended these rights during the wardship of the mentally incapacitated ward.⁷⁷

Britton

Britton was written at approximately the same time as *Fleta*, and it has been suggested that each author drew on the other's work; these two works have definite similarities, especially with regard to the mentally incapacitated.⁷⁸ The commentary called *Britton* was written in an unusual way; the author placed all of his text in first person as if speaking as the king. Many copies of his manuscript survive attesting to its popularity, which may in part be because it was in French rather than Latin.⁷⁹

On the subject of the mentally incapacitated, *Britton* maintained a separation based on onset — from birth or later in life:

And whereas it sometimes happens that the heir is an idiot from his birth (*sot nas-tre*), whereby he is incapable of taking care of his inheritance, we will that such heirs, of whomsoever they hold, and whether they be male or female, remain in our custody, with all their inheritances, saving to every lord all other services belonging to him for lands held of him, and that they so remain in our wardship as long as they continue in their idiocy (*sotie*). But this rule shall not hold with regard to those who become insane (*fous*) by any sickness.⁸⁰

⁷⁷ *Year Books of Edward II*, ed. by Maitland and others, II, no. 53, p. 151.

⁷⁸ If the author of the *Fleta* was Matthew of the Exchequer, his library contained a copy of *Britton* lending strength to the argument that Matthew based his work on *Britton*. Yet, that copy could have been added to his library after the completion of *Fleta*. The author of *Britton* is still unknown, but may have been one of the judges in the first years of Edward I's reign, possibly John le Breton. Whoever the author, he was quite familiar with *De legibus* as well as *Fleta* and may have known some ecclesiastical law. Still, as much as he may have borrowed and plagiarized into his own text, he was squarely grounded in statute law and was singular in his voice. The author of *Britton* gave no reason why he decided to write in first person as the king, but this choice lends an authoritative air to his words. Lyon, *A Constitutional and Legal History of Medieval England*, p. 334. Harding, 'Breton, John le', and Seipp, 'Fleta'.

⁷⁹ Pollock and Maitland, *The History of English Law*, I, 210.

⁸⁰ *Britton*, ed. and trans. by Nichols, bk I, chap. 3 (I, 20).

Britton generally echoes the *Prerogativa regis*, having the rules different depending upon when and how a person became mentally incapacitated, whether at birth or by malady. Those born in their condition had the guardianship of the king; those who became mentally incapacitated did not. Moreover, since the author defined the origin of becoming mentally incapacitated as, 'by any sickness', rather than a blow to the head or some other physical problem, he left some room for interpretation. Or, perhaps he is referring to those persons with temporary insanity from illness, not wanting the crown to interfere every time a person contracts an illness and becomes unable to think clearly for a time. In any case, several of the mentally incapacitated heirs who were granted guardians by the crown had come to be in that state later in life. Examples include Joan Praeus, Thomas Solariis,⁸¹ and Geoffrey Luterel; all listed in the patent rolls as *non compos mentis*, implying that they had not always been incapacitated. In the case of Geoffrey, beyond the implication in the terminology that he had become mentally incapacitated, there is also evidence that he had either been sane earlier in life or had lucid moments since he had a wife and several children when his relatives and friends all came to the king's agent asking for a change to be made in his status.⁸²

Britton contains many terms for the mentally incapacitated, implying either variations within the two main categories based on onset or many more than two categories. *Britton*, unlike *Fleta*, described the mentally incapacitated using a variety of terms and phrases in French: mad (*arragez*), lunatics (*lunatics*), frenzied persons (*frenetics*), idiots (*sotz*), and fools (*fols*, *fous*).⁸³ The terms *sotz* and *fols* (or *fous*) seem interchangeable in this work, as when describing how a wardship cannot be taken away from a lord 'unless the heir is an idiot (*fol nas-tre*), in which case the lord loses his wardship [...] at least during the life of the idiot (*la vie le soot*)'.⁸⁴ The usage of *arragez* and *frenetics* in *Britton* seems akin

⁸¹ Joan Praeus: Kew, TNA PRO, C 66/85, membr. (7) 6; Kew, TNA PRO, C 66/92, membr. 4. *CPR: Henry III*, III: 1232–1247 (1906), 96.

⁸² Geoffrey's brother, Alexander, was granted the property, out of which he was to provide dowries for Geoffrey's daughters. Geoffrey's wife's father, William de Grey, was given custody of the children. The statement emphasized that William and Alexander should work together in providing for this family, including care for Geoffrey, until he dies. *CPR: Henry III*, v: 1258–1266, 58, 564.

⁸³ For (non-comprehensive) examples in *Britton*, ed. and trans. by Nichols, see the following: for *arragez*, bk II, chap. 3 (I, 223) and bk V, chap. 14 (II, 301); for lunatics and *frenetycs*, bk I, chap. 19 (I, 159); for *sotz*, bk I, chap. 19 (I, 158); for *fols*, bk II, chap. 3 (I, 223); and for *fous*, bk I, chap. 11 (I, p. 42).

⁸⁴ *Britton*, ed. and trans. by Nichols, bk II, chap. 5 (I, 243).

to the usage of the Latin term *furiosi* in previous documents in that these terms described possible symptoms of the condition of the person in much the same way that the English word 'mad' generally invokes a condition with an angry posture. These individuals were not necessarily angry, but, depending on their condition, they might have acted angry. *Britton* also made use of descriptive phrases to increase the precision in evoking types of personal conditions: 'mad persons' (*gentz aragez*), 'in their rage' (*en lour rage*), 'their folly' (*lour sotie*), 'mere fools' (*pur sotz*), 'one otherwise deprived of sense, like born fools' (*autrement sauntz sen, sicum sount fols nastre*).⁸⁵ The author's most often employed and contrasted terms were *aragez* and *fols* or *sotz*, comparable to the earlier *Bracton* differentiating between *furiosus* and *non compos mentis*.

Britton's most obvious connection to *Fleta* on the subject of the mentally incapacitated is the fact that both authors were quite familiar with the change to royal wardship. They both mention a connection between this change and Robert Walerand, one of Henry III's justices, in their discussions. *Britton* mentions conditions that might 'bar the descent of an inheritance to the right heirs'.⁸⁶

The chief lords however cannot be deprived of anything; for a term does not take away wardship, but only delays it until a certain time; unless the heir is an idiot, in which case the lord loses his wardship and the farmer his term, until it be otherwise ordained, at least during the life of the idiot.⁸⁷

The author of *Britton* wrote of this rule as having been 'laid down by the common assent of the great lords of the realm and by the provision of Robert Walerand, in whose heir and heir of his heir the statute first took effect'.⁸⁸ Although he made it clear that this provision had been accepted and to some degree ratified as official by the 'great lords of the realm', he neither called it *Prerogativa regis* nor any other title. Since there is no statute dealing with such matters, his reference to a 'statute' is perplexing, unless the *Prerogativa regis*, which is not written as a statute, was ratified as one. If the author of *Britton* meant common practice, why would he say it had been ratified? And, although

⁸⁵ *Britton*, ed. and trans. by Nichols: *gentz aragez*, bk v, chap. 14 (II, 301); *en lour rage*, bk I, chap. 29 (I, 159); *en lour sotie*, bk III, chap. 2 (II, 20); *pur sotz*, bk I, chap. 19 (I, 158); and *autrement [...] fols nastre*, bk VI, chap. 5 (II, 339).

⁸⁶ See in particular *Britton*, ed. and trans. by Nichols, bk II, chap. 5 (I, 242–43).

⁸⁷ *Britton*, ed. and trans. by Nichols, bk II, chap. 5 (I, 242–43).

⁸⁸ 'pur la purveaunce Robert Wallraunt, et par commun assent des grauntz seignurs del reaume, et en qi heyr le estatut prit primes effect et en le heir de soen heir'; *Britton*, ed. and trans. by Nichols, bk 2, chap. 5 (I, 242–43).

there is an unproved connection between Robert Walerand and the *Prerogativa regis*, this document was not an *estatut*. Nevertheless, wardship for the mentally incapacitated did become common practice by the fourteenth century.

Britton addresses the topic of the mentally incapacitated to point out their legal limitations. In reference to creating wills or consenting, *Britton* states that,

[T]hose who know not how (*ne sevent*) or are not able (*ne poent*) to consent, like the deaf, and the mad (*arragez*), and mere fools (*pur sortz*), and infants in their tender age, and lunatics (*lunatics*) and frantic persons (*frenetycs*) during their fury, and married women [...]. With such persons no contract or obligation is binding.⁸⁹

This passage again imitates several found in the *Corpus juris civilis*, *Bracton*, and *Fleta*, but incorporates a wider selection of classifications of mental incapacity.⁹⁰ The documents all agree, though, that one who is unable to think clearly or make even minor decisions, should not be expected or allowed to participate in legal matters; others should do this for them. And, all these sources agree that the mentally incapacitated would not make good witnesses and should not be summoned. For example, *Britton* explains that:

All persons ought not to be summoned. For an infant under age is not capable of receiving any summons except through his guardian; [...] nor a madman (*homme arragé*), nor one otherwise deprived of sense (*sauntz sen*), as an idiot (*fols nastres*); nor deaf and dumb persons; nor married women without their husbands.⁹¹

Fleta says that, ‘everyone can be summoned who can be convened’; those who could not be convened included people in prison, canons, and ‘madmen and those quite out of their senses, the deaf and the mute’, and unescorted, married women.⁹² The author of *Bracton* excuses even those who were sick and ‘unable to take notice of things.’⁹³ Courts did pardon all wards, including mentally disabled persons from duty as jurors; they also pardoned those who were ill, overly poor, away on the king’s business, or mentally incapacitated.⁹⁴

⁸⁹ *Britton*, bk I, chap. 29, § 6.

⁹⁰ *Institutes*, II. 12. 1, 3. 19; *Code*, 6. 12. 9; *Digest*, xxviii. 1. 3, 6; *Bracton*, *De legibus et consuetudinibus Anglie*, fol. 420^v, lib.v , cap. 20 (*Bracton*, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, IV, 308); and *Fleta*, ed. and trans. by Richardson and Sayles, bk II, cap. 56 (II, 189).

⁹¹ *Britton*, ed. and trans. by Nichols, bk VI, chap. 5 (II, 339–40).

⁹² *Fleta*, ed. and trans. by Richardson and Sayles, bk VI, cap. 7 (IV, 120).

⁹³ ‘Quia non discernit’. *Bracton*, *De legibus et consuetudinibus Anglie*, fol. 436^v, lib. v, cap. 29 (*Bracton*, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, IV, 357).

⁹⁴ *Britton*, bk VI, chap. 5; Waugh, *The Lordship of England*, p. 115; Butler, *The Language of*

The author of *Britton*, like those of *Bracton* and *Fleta*, used the image of beasts in conjunction with the incapacitated, but he used this image to indicate physical impairment, while the authors of *Bracton* and *Fleta* use the metaphor of beasts to describe the thought patterns of the mentally incapacitated. *Bracton* compares the mad and the mentally incapacitated to ‘brute beasts’ since all of these groups ‘lack reason’,⁹⁵ and *Fleta* considers the mentally incapacitated ‘not far removed from brute beasts which lack feeling and reason’.⁹⁶

The Mirror of Justices

The author of *The Mirror of Justices*,⁹⁷ in contrast to the authors of *Fleta* and *Britton* and nearly all other legal writers, uses biblical passages and images to illuminate his points about the law and often associated sin with unlawful actions or persons.⁹⁸ The author focuses not on ecclesiastical law or the canon, but rather concentrates on those who break the law and compares them to the sinful. From this unique perspective, *The Mirror* also points out that the mentally incapacitated became the king’s wards and, just like *Fleta* and *Britton*, mentions a connection between Robert Walerand and the change in the laws concerning the mentally incapacitated. Even though it was written about the

Abuse, pp. 214–15.

⁹⁵ Bracton, *De legibus et consuetudinibus Angliae*, fols 420^v–421^r, lib. v, cap. 20, § 1 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, iv, 308). For more information on what constituted a fully-fledged human in the Middle Ages, see Friedman, *The Monstrous Races in Medieval Art and Thought*.

⁹⁶ *Fleta*, ed. and trans. by Richardson and Sayles, bk vi, cap. 40 (iv, 181).

⁹⁷ *The Mirror of Justices* was probably written about the same time as *Britton* and the *Fleta* in the 1280s and for the same purpose and, supposedly, in the same manner as *Fleta*: with the author in gaol for speaking out against false judges. F. W. Maitland in his introduction to *The Mirror*, made a decent case for considering Andrew Horn, the fishmonger, as the author of *The Mirror of Justices*. Before spending time in gaol, Horn had served as Chamberlain of the City of London from 1320 until he died in 1328. In his will Horn left to the Guildhall an impressive lawbook collection for the time that included *De veteribus legibus angliae*, *Bretoun*, and *De statutis angliae* among others indicating that he had access to the appropriate reference materials needed to write such a work. For further information on *The Mirror of Justices*, see: *The Mirror of Justices*, ed. by Whittaker. Information on *The Mirror* is sparse, but some can be found in Richardson and Sayles, *Law and Legislation*, p. 41, and Thorne, ‘The Equity of a Statute and Heydon’s Case’, p. 155; and F. W. Maitland in the ‘Introduction’ to *The Mirror of Justices*, ed. by Whittaker, especially pp. xii–xvi.

⁹⁸ See Chapter 5 on ‘Criminals’ for more on this topic.

same time as *Britton* and *Fleta*, *The Mirror* was completely independent in thought from them. *The Mirror* is littered with biblical metaphors comparing the action of the law to the justice of heaven.

The Mirror of Justices seems quite certain that Robert Walerand was responsible for the royal wardship of the mentally incapacitated. The mentally incapacitated were to remain 'in ward by general ordinance',⁹⁹ which had been 'ordained' by Robert Walerand.¹⁰⁰ Just as in *Britton*, *The Mirror* indicates that wardship was reserved for those born mentally incapacitated: 'Robert Walerand ordained that heirs who were born fools should be in ward to the king, to be married along with their inheritances, of whosoever fees those inheritances might be held'.¹⁰¹ Although it is unknown whether the author of *The Mirror* saw a copy of *Fleta*, this last statement, especially concerning marriages of the mentally incapacitated, sounds like the statement in *Fleta*: 'that the king should marry them and preserve them from any derision'.¹⁰² Neither of them mentions the *Prerogativa regis*, and yet both made a connection between the name Walerand and the royal wardship of the mentally incapacitated.

On the subject of legal action, including acting as a witness, transferring property, and making contracts, *The Mirror* agrees with *Bracton* and *Fleta*, but consistently adds religious judgements, implications, or causes. Many could not give testimony: 'This is forbidden to women, to infants, to serfs and to all who are within ward, to madmen, to excommunicates, to natural fools [...] to those who are not in the faith of Christ and of the king'.¹⁰³ The author includes references to the Christianity of the king and kingdom, even when discussing contracts:

Law forbids one to make a contract with an enemy of the heavenly or the earthly king, [...] or with those who are not of the Christian faith, [...] or with those who are in ward unless it be for their advantage, or with the deaf or the dumb, or with born fools, or with lunatics.¹⁰⁴

⁹⁹ *The Mirror of Justices*, ed. by Whittaker, p. 24.

¹⁰⁰ *The Mirror of Justices*, ed. by Whittaker, pp. 24 and also 138. The quote continues, 'as is the case with idiots, prodigals, hostages, madmen, and those who, having been attainted of venial infamatory sins, are imprisoned as is right in certain cases' (p. 24).

¹⁰¹ '[O]rdena Robert Walraund qe fous nastes heirs soient en la garde le Roi pur marier ovesqe lur heritages de qi fieus qil tiegnent'; *The Mirror of Justices*, ed. by Whittaker, pp. 138–39.

¹⁰² *Fleta*, ed. and trans. by Richardson and Sayles, bk 1, cap. 11, § 8 (1, 21).

¹⁰³ *The Mirror of Justices*, ed. by Whittaker, p. 83. See also on those who cannot bring accusations: 'idiots without guardians', *The Mirror of Justices*, ed. by Whittaker, p. 45.

¹⁰⁴ 'Droit defent qe nul ne face contract as enemis le Roi celestre ne terestre, [...] ne a ceux

Throughout the manuscript, the author of *The Mirror* maintains the partition between those born mentally incapacitated and those who became 'lunatics' or 'madmen'.

Unlike any of the other commentaries in this chapter, *The Mirror* concludes that those who became mad could be guilty of sin, but those who were born without intelligence could not discern and, because of this, they could not decide to sin and should not be held responsible for their actions. Still, the reader is left with the impression that the author never quite harmonizes the two images of the mentally incapacitated, that of the sinner and that of the innocent. Although only one copy exists, it provides insight into the social and religious perception of the mentally incapacitated at the turn of the thirteenth to the fourteenth century.

* * *

While legal scholars of the late thirteenth and early fourteenth centuries continued to debate issues surrounding humanity's physical inconsistencies, there seemed to be an agreement that there were arguably two major categories of mental incapacity: those born without mental capacity and those that became mentally incapacitated. The division of Ancient Rome in the *Corpus juris civilis* of passive and aggressive is adopted but not emphasized in England. Though all mentally incapacitated landholders were treated much the same, the division occasionally was useful when the crown made decisions regarding lands, guardians, and profits. The king made every effort to place those who became mentally incapacitated in the care of family, especially those with periodic mental conditions, as had been practised in Roman law. The crown's administration managed the properties of those born with their disabilities as income, with a small amount reserved to pay a stipend to the guardian and for upkeep of the ward; whereas, with properties of those who became mentally incapacitated, the crown managed quite differently, reserving the profit for the mentally incapacitated individual, who might become well, or for his heirs. Again, most of these persons had family members as guardians, who kept a small portion for their efforts.

In addition to *Bracton* from the mid-thirteenth century, several legal commentaries appeared at the end of the thirteenth century debating divisions of

qe ne sunt a la foi crestiene, [...] ne a nul qest en garde si noun al profit de ceux en garde, ne as sourz ne a muz, ne as foux nastres, ne arragez'; *The Mirror of Justices*, ed. by Whittaker, p. 73. See also *Britton*, ed. and trans. by Nichols, bk 2, chap. 3 (1, 222–23).

the mentally incompetent into categories of onset and the crown's rights in the lands of those persons. The most important commentaries for this discussion were *Britton*, *Fleta*, and *The Mirror of Justices*. All three of these works have passages that make reference to a 'recent' change in the law with respect to the mentally impaired and incapacitated. All three of these works used different terminology, whether Latin or French, for the mentally incapacitated, providing a useful comparison and means by which to define the terms most often used in legal and administrative contexts in medieval England.

DETERMINING INSANITY

The said Emma [...]. Being asked what day that Friday was, she said she did not know. Being asked how many days there were in the week, she said seven, but could not name them. Being asked how many husbands she had had in her time she said three, giving the name of one only and not knowing the names of the others. Being asked whether she had ever had issue by them, she said that she had had a husband with a son, but did not know his name. Being asked how many shillings there were in forty pence, she said she did not know. Being asked whether she would rather have twenty silver groats than forty pence, she said they were of the same value. They examined her in all other ways, which they thought best, and found that she was not of sound mind, having neither sense nor memory nor sufficient intelligence to manage herself, her lands or her goods. As appeared by inspection, she had the face and countenance of an idiot.¹

Early in English history, lawmakers determined a need for at least limited protection for mentally incapacitated persons committing crimes, whereas, royal protection of mentally incapacitated property holders in medieval England did not become established until about the middle of the thirteenth century. The first question in both cases was how to determine the state of an individual's mental sanity or insanity. A second question followed concerning identification of the characteristics and gradations of incapacity. Other issues connected to the two primary ones were not raised as questions so much as practical concerns: who makes the determination, can it be questioned or appealed, and what happens if a 'status' changes?

¹ Emma Beston. *CIM*, IV: 1377–1388 (1957), no. 227, pp. 125–26.

Royal wardship altered the position the mentally disabled in society: as landholders, they became convenient sources of income for the crown, which used the income from their lands as payments toward debts. Land was an important issue for the king and his administration, and the mental state of a landholder affected the production and care of the land and, likewise, the income to the crown. The crown and his officers watched for mental incapacity, just as they might any money-generating campaign. In cases of crime, the king might benefit from a sane criminal, depending on how the land was held. For example, the king or a lord might gain from the forfeiture of lands by a suicidal person; however, if the person was mentally afflicted at the time of a crime, which included self-murder, his properties would pass to his heir, and he would be given a 'Christian burial'.² The legal focus, therefore, was on the state of the mind of the person and whether or not he had property. This chapter focuses on how the determination of a mental state was made, what the status of these mentally incapacitated persons became, and who made the determination.

A 'Test' for Sanity

The king did not wish to be accused of confiscating land unnecessarily — he had enough problems. A determination needed to be made as to the authenticity of an accusation of a person being of unsound mental health. The king sent an official to check on an accused person or had that individual come to court, to the chancery or even to the king's council for questioning. The person was asked to perform simple tasks, to answer questions or to describe things with which he should be familiar. 'Counting money, measuring cloth and doing all other things',³ such as stating his name or the names of his parents and children, describing his village or the courtroom, gave the questioners indications as to the person's level of competency. Some of the people questioned were sent home; some were rechecked periodically; some became wards of the crown.

The examiners' questions and choices of terminology indicate how medieval English society considered the mentally incapable person, and these indicators give the impression that society closely connected the idea of emotion with stability and memory with intelligence. The full inquiry of one accused of madness or mental incapacity was a combination of testimony by persons who had known the individual for some time and a series of questions answered or tasks

² Murray, *Suicide in the Middle Ages*, I (1998), 162–63.

³ Thomas Grenestede. Kew, TNA PRO, C 135/63, membr. 8v.

accomplished by him or her in front of the examiners.⁴ The types of questions and tasks required of the person being examined would have provided the examiners some indication as to the individual's cognitive ability. An heir needed to be able to care for land, which required an ability to make decisions, an understanding of the environment, a comprehension of right and wrong, and a sense of self and community.

The interrogation of a person suspected of being mentally incapacitated was intended to demonstrate the level of competency in that person to function in daily life. Upon occasion clerks recorded the actual questions asked during an interrogation. One such set of questions appears in the *Inquisitions post mortem* for 15 Edward III (May 1342): The escheator 'went in person to Kerdyngton and examined the said Thomas in every way that he could as to his state (*status suus*) [...] [and found him] of good mind and healthy memory (*sane memorie*) in word and deed, counting money, measuring cloth (*denarios numerando & pannos valuando*) and doing all other things'.⁵ The actual questions in examinations were rarely recorded, although many records attest to an 'examination being made' of the person and the result, either he 'is found that he is not a madman and an idiot, but is wise and sufficient for the government of his affairs'⁶ or she is found to be 'an idiot since birth'⁷ or some other pronouncement on his or her mental state. The tests of competency all seem to be similar and included relatively simple tasks and questions of memory.

The opening quote of this chapter is a portion of Emma Beston's testimony. The commission asked many other questions and examined her behaviour. This group, a commission of three men joined by at least one other, questioned Emma Beston on a variety of matters. She often replied that, 'she did not know': where did she come from, what day is Friday, how many shillings are in forty pence? When asked 'whether she would rather have twenty silver groats (*grossos*) than forty pence, she said they were of the same value'. They asked what

⁴ *CIM*, IV: 1377–1388, no. 227, p. 125.

⁵ Kew, TNA PRO, C 135/63, membr. 8v. See also: the rest of C 135/63, membr. 8, which has several interesting manuscripts and the printed *CIPM*, VIII: 10–20 *Edward III* (1913), no. 284, p. 209, and no. 340, p. 236; and Kew, TNA PRO, C 135/65, membr. 20.

⁶ William Maureward. Kew, TNA PRO, C 54/126, membr. 17d cancelled; Kew, TNA PRO, C 260/13, no. 6; Kew, TNA PRO, C 262/5, no. 2; and *CCR: Edward II*, I: 1307–1313 (1892), 132.

⁷ Agnes Prat. Kew, TNA PRO, C 136/40, membr. 4; and also: Kew, TNA PRO, C 137/52, membr. 10; *CIPM*, XVI: 7–15 *Richard II* (1974), no. 275, p. 103; and *CIPM*, XIX: 7–14 *Henry IV*, ed. by Kirby (1992), no. 14, pp. 3–4.

town she was in now and she replied, 'Ely', when the questioning was taking place in Lincoln and she resided in Bishop's Lenn. Some questions she handled better; at being asked, how many days are in a week? She answered, 'seven, but could not name them'. When the commissioners asked how many husbands she had had, she replied, 'three, giving the name of only one and not knowing the names of the others'. The group asked if she had any children and she explained that she had a son, 'but did not know his name'.⁸ These seemingly simple tasks — counting money, measuring cloth, knowing basic facts about yourself and your family and town — demonstrated to the examiners the extent to which the individual could or could not function as a member of society.

Medical Determination

Royal record-keeping bodies used a group of terms related to those used in medical works, but their terms were not always medical ones. Administrators and clerks employed a combination of old Roman legal terms, medical divisions of mental conditions, and their own signifiers. Their choice of term depended on the behaviour and ability of the person being described as the terms were scaled from the most passive conditions to the most violent.⁹ Physicians only tangentially influenced civic officials in medieval England in the understanding and treatment of mentally incapacitated persons. Nevertheless, a quick overview of medieval medical understanding will provide background into how medieval physicians viewed conditions of mental illness, disability, and incompetence and about which conditions they were willing or able to provide treatment.

The medieval medical community supposed that there were three regions of the brain that governed human activity, knowledge, and memory. Common sense and sensation were housed in the anterior of the brain, understanding in the middle, and memory in the back.¹⁰ Bartholomaeus Anglicus explains:

The common inner virtue is divided into three, by three regions of the brain. For in the brain there are three small cells, that is that the foremost in which the very Imagination works. There in things that the utter wit (senses) apprehend without (in the world), are (then) ordered and put together within (the mind), as says Johannicus. There is also a middle chamber hosting Logistics: there the sensibility

⁸ *CIM*, iv: 1377–1388, no. 227, p. 125.

⁹ Turner, 'Defining Mental Afflictions'.

¹⁰ This was the common arrangement throughout the Middle Ages. See Porter, *The Greatest Benefit to Mankind*, p. 177 and throughout pp. 65–77.

of reason or Estimation virtue is a master. Again, there is the third and last, which is the memory, the virtue of the mind. That virtue holds things that are (mentally) apprehended and knows by imagination or reason.¹¹

Later in the Middle Ages, five functions were identified, along with the senses, and linked to locations in the brain. The brain was still divided into three regions, called ventricles — imagination, reason, and memory — but these three housed the five functions¹² and the five senses — sight, smell, taste, touch, hearing.¹³

In the foremost ventricle, an individual would assess the world around him through his five senses and his imagination. That, they might explain, was how a man knew a human in the distance was far away and not small; he could imagine the person standing next to him and knew him to be of normal size and structure. Common sense was listed as being in the anterior of the brain for this very reason: it provided perspective and judgement on the input of the sense as well as action in response ('of good mind [...] in word and deed').¹⁴ Also, since this is where all senses, including feeling, entered the brain, this was the location of bodily movement.

The centre of the brain was not just 'reason' or 'cognition' but a real sense of 'understanding'; that an individual could not only count coins and make change, but also fit what his sense told him into reality. If the man in our example above

¹¹ 'The commune inner vertue is departed in thre, by thre regyons of the brayne. For in the brayne ben thre small celles, that is to witte the foremost in whiche the verure Imaginatiua worketh in. Therin thynges that the utter wytte apprehendeth without, ben ordeyned and put togyders within, as sayth Johannis. There is also a mydell chaumbre hight Logistica: therin the reason sensible or vertue Estimatiua is a mayster. Agayne there is the thyrd and the laste, whiche is memoratiua, the vertue of mynde. That vertue holdith thynges that bene apprehended and knowen by Imagination or reason'. Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa, bk III, chap. 10, p. 13^r: 'Of the commune or inner sence'.

¹² Depending on the scientist or physician these were sometimes listed as common sense, imagination, fantasy, cognitive power, and memory.

¹³ The five functions or ventricles were arranged somewhat differently depending on who was writing, but always ended with memory in the back. The five included common sense, imagination, fantasy, cogitative power or estimation, and memory. 'Common sense' was not quite what we think of — it was connected to all the senses and was a type of filter through which sense was made of the input from the five external senses. Charts have lines connecting 'common sense' to the ears, eyes, etc. Imagination and fantasy always seem to hover around or on the line between the front and middle sections of the brain. For a nice example of one of these illustrations, see Siraisi, *Medieval and Early Renaissance Medicine*, pp. 82–83, fig. 13.

¹⁴ See Thomas Grenestede above. Kew, TNA PRO, C 135/63, membr. 8d.

began walking toward the figure in the distance, he might *estimate* how long it would take him to arrive, using his power of reason in the middle ventricle, according to medieval medical understanding. If the journey took much longer or much shorter, he would adjust his understanding of the distance rather than thinking the road had suddenly lengthened or shortened. This man would be deemed to have a sound understanding of the world and its principles, as well as of how to gage things within it ('count coins', 'measure cloth'¹⁵).

The posterior ventricle housed the memory. A 'healthy', or *sane*, memory was counted as integral to life in a non-literate society. It was one thing to count how many coins are on a table and another to give correct change, something nearly impossible if one cannot remember the value of each coin. Both physicians and royal administrators distinguished between long-term and short-term memory as well as false memories, though they did not use this modern terminology. Physicians found the loss of memory indicative of a humoral imbalance, which could lead to lethargy — a serious condition, in medieval pathology, causing weakness and exhaustion and not just lack of recall and will.

As a group, the medical community — including physicians, surgeons, phlebotomists, apothecaries, midwives, and specialists — covered all kinds of head related trauma and illnesses, from brain injuries to migraine.¹⁶ They clustered external symptoms of mental incapacity around what physicians perceived to be the affected areas of the brain in an attempt at pathology. Obvious head wounds were clearly to blame for some mental trauma, even if temporary.¹⁷ Less visual causes and symptoms made diagnosis difficult but not impossible. Once they could identify a possible cause, they could begin to map out the imbalance in their patients' humours and affect a corrective. The imbalance of humours affecting the brain and, therefore, the response of the patient, depended on the combination of humours involved as well as the part of the brain affected, indi-

¹⁵ Kew, TNA PRO, C 135/63, membr. 8d.

¹⁶ The analysis of medieval medicine with regard to their understanding of mental activity could be a book in and of itself.

¹⁷ Trauma to the head could cause a loss of consciousness, temporary or permanent blindness, or madness. Roger Frugard (*c.* 1180) in his treatise on surgery, *Chirurgia*, explained how and when to operate on a head injury, which he called *la deverie*. He wrote that *la deverie* is called 'mania or melancholia', both terms and conditions of mental incapacity. In this case the patient has a 'cut [broken?] head' (*la teste tailleiz*) with a 'shard [skull fragment]' (*le quir*) afflicting him. Frugard instructed surgeons to 'first bind the patient. Then, by opening the head with a tool that is called trepan, through removal of the material of the malady, is that which is at issue [causing the problem]. It is the healthy wound, as is truly said, [which] is a cure for the previous wound'. See Frugard, *Chirurgia*, I. XXVI (p. 53).

Table 1. Medieval Medical Terminology for Mental Conditions of the Brain

Area of Brain/ Head [<i>Result</i>]	11th century Medical texts*	13th century Gilbertus Anglicus†	13th century Bartholomaeus Anglicus‡	15th century Medical texts§
All Over Brain [<i>Headache</i>] 'skins'/ 'pores' — meninges [<i>Other conditions</i>]	Headache	Headache Epilepsy Scotomy Apoplexy	Headache Epilepsy Scotomy Frenzy (in meninges)	Headache Epilepsy Scotomy Apoplexy
Back (Posterior) [<i>Loss of memory</i>]	Mental vacancy Folly	Lethargy	Lethargy	Lethargy
Middle [<i>Loss of reason</i>]	Witless Wode	Melancholia Witless Wodeness	Melancholia Witless Stupor	Melancholia Witless Stupor
Front (Anterior) [<i>Loss of imagin- ation and recall</i>]	Dementia Frenzy Lunatic Devil Sick Demon Possession	Mania Frenzy Lunatic	Amentia Mania Lunatic	Amentia Mania Frenzy Lunatic

* *Anglo-Norman Medicine*, ed. by Hunt; *Anglo-Saxon Remedies, Charms, and Prayers*, ed. and trans. by Pettit, 1: *Leechdoms, Wortcunning and Starcraft of Early England*, ed. by Cockayne; BL MS Cotton Vitellius C.iii (Herbarium and *Materia Medica*, Anglo-Saxon); BL MS Additional 8928 (Treatise on *Materia Medica*); BL MS Harley 1585 (Treatise on *Materia Medica*); BL MS Harley 6258B (Herbal, Perididaxeon).

† Gilbertus Anglicus, *Healing and Society*, ed. by Getz; and San Marino, Huntington Libr., MS HM 19079 (Leechbook, Medical Treatises, c. 1400), which contains a partial copy of Gilbertus in the centre.

‡ Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa; Bartholomaeus Anglicus, *Batman uppon Bartholome*, ed. by Batman.

§ A selection of various fifteenth-century manuscripts and early printed medical and scientific works, including: Arderne, *De arte phisicali et de cirurgia*, trans. by Power; *A Leechbook or Collection of Medical Recipes*, ed. by Dawson; San Marino, Huntington Libr., MS HM 64 ('Astrological and Medical Compilation'), fol. 196^{r-v}, frenzy, epilepsy, lethargy; San Marino, Huntington Libr., MS HM 1336 (Medical Recipes in English); San Marino, Huntington Libr., MS HM 19079 (Leechbook, Medical Treatises, c. 1400); San Marino, Huntington Libr., MS HM 26053 (Herbal and Medical Tracts).

cated by patient response. These indicators gave physicians a starting point for remediation through pharmaceuticals, diet, abuse (beatings were thought effective in some cases¹⁸), or changes in climate or living conditions.

There were many physicians of merit, but for brevity a comparison of two will suffice here to provide a general explanation of the medieval medical understanding of, and confusion over, mental conditions. Both Gilbertus Anglicus and Bartholomaeus Anglicus lived and worked in the thirteenth century and both were closely associated with England. Like most medieval physicians, they both address pathologies and remedies following a head-to-toe organization and, therefore, conditions of mental incapacity are early in their works since they were associated with the head.¹⁹ Both physicians include information on some quite common head related complaints — headache, migraine (which Gilbertus calls ‘demegreyn’²⁰), epilepsy, scotomy, wakefulness, sleepiness — covering ‘sikenessis as wel as aches’²¹ of the head, followed by mental conditions.²² These mental conditions are then described from the front of the head to the back (see Table 1).

¹⁸ The author of the *Leechbook of Bald* explained that: ‘In case a man be lunatic; take skin of a mereswine or porpoise, work it into a whip, swinge the man therewith, soon he will be well’. *Leech Book*, in *Leechdoms, Wortcunning and Starcraft of Early England*, ed. by Cockayne, II (1965), no. xl, p. 335.

¹⁹ Talbot, *Medicine in Medieval England*, pp. 72–76.

²⁰ ‘[T]hat is, the ache of one side of the head’. Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 4. I have read the chapters on the ‘Head’ and the various mental illnesses in many copies of Gilbertus’s works in London, including at the British Library (BL MS Sloane 272, Gilbertus Anglicus, *Laurea Anglicana* with a compendium of medicine, fifteenth century), and the Wellcome Library (London, Wellcome Libr., MS 537/3, which is the one that Getz has so beautifully edited), and at the Huntington Library (San Marino, Huntington Libr., MS HM 19079: *Leechbook, Medical Treatises*, c. 1400). I have confidence that this fifteenth-century translation, though in Middle English, is so close to the others that it is just more convenient to use this published copy here. The same is true of Bartholomaeus Anglicus, *De proprietatibus rerum*. Again, I chose to use this translation from the fifteenth century, rather than a medieval or early modern manuscript. If I later work more in depth on the medical aspects of medieval psychiatry, I would, of course, work from these manuscripts at that time.

²¹ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 6.

²² Some idea of the types of conditions and symptoms covered can be gleaned from the chapter titles. Gilbertus Anglicus, *Healing and Society*, ed. by Getz: ‘Headache’, pp. 1–6; ‘Other Sicknesses of the Head’, pp. 6–10; ‘Frenzy’, pp. 10–13; ‘Mania’, pp. 13–16; ‘Lethargy’, pp. 16–20; ‘Epilepsy’, pp. 20–27; and ‘Apoplexie’, pp. 27–31. In Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa: ‘Of the commune or inner sence’, bk III, chap. 10, p. 13^r; ‘Of Melancholie’, bk IV, chap. 11, pp. 31^r–32^r; ‘The propretees of the heed’, bk IV, chap. 2,

The conditions affecting the anterior of the brain had symptoms related to action, sensation, and imagination. Many of the conditions categorized as affecting the front of the brain were associated with action: rage, loss of self-control, and unrestrained behaviour.²³ This idea of movement being connected to the brain's anterior portion explains why physicians used the same remedies for lunatics and epileptics. Physicians thought of lunacy and epilepsy as phlegmatic diseases that played havoc with an individual's ability to control his actions — 'falling sickness'.²⁴ In medical works, authors write or imply that if the moon affected water and was connected to the birth cycle, epilepsy and lunacy as periodic afflictions were also both cyclical and, therefore, must be associated with the humour phlegm (water) and, possibly, affected by the moon.²⁵ This is one of the medical ideas that clearly affected civic treatment of the mentally impaired; people known in the community as lunatics were often watched more closely or even locked up during the days of the full moon, just in case they lost control.²⁶

Gilbertus is quite clear that frenzy is a mental condition of the anterior ventricle of the brain, describing patients as having 'common signs that follow this sickness [...] much waking, and lacking of good wit, wrath and madness, and sudden risings up, and sudden fallings down',²⁷ all actions. He explains that,

pp. 33^v–35^r; 'Of the brayne', bk iv, chap. 3, pp. 35^r–36^v; 'Of medicine and remedies for ache and peyne of the heed', bk vii, chap. 3, pp. 85^v–86^r; 'Of the frenesie and the causes & remedies therof', bk vii, chap. 5, pp. 86^v–87^r; 'Of madness and the causes and signes therof', bk vii, chap. 6, p. 87^{r-v}; 'Of certayne propertes of the mone', bk viii, chap. 30, p. 131^r.

²³ Some said that an imbalance in the skins or overall brain led to headache, epilepsy, scotomy (spots before the eyes), apoplexy, or *frenesy* in certain cases. For example, Gilbertus Anglicus, *Healing and Society*, ed. by Getz, pp. 7–10.

²⁴ Gilbertus writes: 'Epilepsy is the falling evil and it comes from moist humour that fills thick places of the head that should be void [...] the principal places of the brain become altogether stopped [up]. Wherefore in her access, they feel nothing and the foam at her mouth, and all her body quakes, and it is very hard to help them'; Gilbertus Anglicus, *Healing and Society*, ed. by Getz, pp. 21–22 ('Epilepsy', pp. 21–27).

²⁵ Medieval medical writers say that epilepsy was caused by either a general problem with the brain or an imbalance in the 'skins of the brain'. John of Gaddesden (1280–1349), another English physician, recommends reading the gospel over an epileptic patient while ornamenting him with flowers. See Porter, *The Greatest Benefit to Mankind*, p. 112.

²⁶ For example, Richard Thurnbern of Brent who was found guilty of a crime and had his sentence reduced because he was 'in furore tempore quo fuit lunaticus'. See: *Select Pleas of the Crown*, ed. by Maitland, no. 187, p. 119.

²⁷ 'Comen signes þat folowen þis sikenes is: moche waking, and lacking of good witt,

'Frenzy is a burning postem [poorly digested humours] in the forepart of a man's brain or in the skins of the brain.'²⁸ Bartholomaeus puts frenzy also in the 'skins' of the brain (meninges), but allows for its occurrence in other 'celles' of the brain without distinguishing which 'celles'. He quotes from 'Deuteronomy 28. Our lord shall smite thee with madness, and loss of wit and of mind, and with stoning, etc. Here he calls madness frenzy', and identifies the 'he' as Constantinus Africanus (c. 1020–87, physician).²⁹ For Bartholomaeus, frenzy and madness (*wodeness*) are the same, arising from illness in either the skins (meninges) or another portion of the brain, though he never explicitly connects frenzy with the anterior ventricle.

The be the signs of frenzy: discoloured urine — during fever, with coldness and continual waking, mewing and casting about of the eyes, raging — stretching — and casting out of hands, mewing and wagging of the head — grinding and gnashing together of the teeth, always they will arise out of their bed, now they sing, now they laugh, now they weep, and they bite gladly — and rent their keeper and leech (physician), should be they still — but cry much. And these are the most perilously sick — and yet they want not then that they were sick.³⁰

The movement and agitation of Bartholomaeus's patient is clear from the passage. He also classifies dementia (which he labels *A mentia*) as a condition of the anterior ventricle. He writes that, 'amentia and madness are the same, as Plato says — madness is an infection of the foremost cell of the head, with deprivation of imagination'.³¹

wreep and wodenes, and doneyn risinggis vp, and sodeyn fallinggis dovne'; Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 10.

²⁸ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 10.

²⁹ 'Deuteronomii. 28. Oure lorde shall smyte the with woodnes, and losse of witte and of mynde, and with stonings. &c. Here he calleth wodnesse frenesi [...]' (*he* being Constantine the African); Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa, bk VII, chap. 5, p. 86^r. For a summary of Constantinus's life, see Porter, *The Greatest Benefit to Mankind*, p. 107.

³⁰ 'These bene the sygnes of frenesy; dyscolouryd vryne / duringe the feuer, with coodnes and contrynual wakyng, meuyng and castyng aboute the eyen, racyng / stretchyng / and castyng out of hondes, meuinge and waggyng of the heed / gryndyng and gnasshyng toggyders of the teeth, alway they woll arise out of theyr bedde, now they synge, now they laughe, now they wepe, and they byte gladly / and rente theyr keper and leche, selde be they styll / but crye moche. And these be mooste peryllously syche / and yet they wote not then that they be syche'; Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa, bk VII, chap. 5, p. 87^r.

³¹ 'A Mentia and madnes is all one, as Plato sayeth / Madnes is infectio[n] of the formeste celle of the heed, with priuacion of imaginacion'; Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa, bk VII, chap. 6, p. 87^r.

Many physicians³² associated a loss or increase of sensation and the reaction of becoming more active, and at times violent, with mental conditions affecting the 'skins' or meninges³³ and the anterior of the brain. Therefore, if a humour imbalance affected the anterior of the brain, according to medieval medical texts, it could lead to frenzy, dementia (or amentia), or lunacy, causing a loss of perception, control, and sensation.

According to medieval physicians, humours affecting the middle part of the brain brought on mental conditions involving loss of reason. This imbalance could lead to mania, witlessness, and something called 'melancholia', producing a loss of reason, cognitive, or estimation abilities. These conditions were less violent and uncontrolled than those produced from illness in the anterior of the brain, but could be just as socially debilitating. Gilbertus explains that only the humours of blood, choler, and melancholy affect the middle part of the brain, 'but of clean phlegm it comes nevermore, for phlegm is white as the brain is and therefore it may not appear in it'.³⁴ The various conditions produce different types of mania,

And if it comes of blood, the grievance is with laughing. And if it is of choler [yellow bile], it is with a fierce madness (*wodeness*). And if it is of melancholy [black bile, melan-choler], it is with much dread. And if it is of choler and melancholy mixed together, he laughs and fights together. And so if it is of other humours, it has the properties of those humours.³⁵

Gilbertus continues this passage to explain how the patient will act if he is affected by 'melancholy', the illness of black bile.

[T]hey have much sorrow, and dread much of things that are not to dread, and think on things that are not to think on. And they say that they see dreadful things when they see nothing. And they say that they see black devils either monks that should slay them. And some whine that heaven will fall down on them and some that the earth will fall [out from] under them. And they have much desire after leeches and after medicines. [...] And they desire to be in dark places and by themselves.³⁶

³² In at least one fifteenth-century astrological text, loss of imagination and recall was listed as *frenesy*. San Marino, Huntington Libr., MS HM 64 ('Astrological and Medical Compilation', *frenesy*, epilepsy, lethargy), fol. 196^{r-v}.

³³ The swelling of a meninx causes meningitis, another medical condition that can mimic or produce a mental disorder.

³⁴ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 13.

³⁵ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 13.

³⁶ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, pp. 13–14.

This seems to indicate that not only has reality been altered for those severely suffering with melancholy but also that they have had an emotional shift. Gilbertus mentions several key emotional qualities in his depiction of this disease — sorrow, dread, fear, even the desire to withdraw from human contact. Gilbertus contrasts this disease of mania from melancholy with that of blood. Those patients, he explains, will wish to walk in the country by rivers, in fields, ‘in fair gardens, and in light places. And they love company and mirth. And if they lack such things, they say that they are nearly [nigh] dead.’³⁷ Mania from yellow bile, Gilbertus says, leads to ‘wrestling, and fighting, and leaping, and other deeds of hardiness, and crying, and much noise’,³⁸ quite a difference from mania from melancholy or blood. All of these, he writes, lessen the patient’s wit (cognitive ability). He gives many suggestions for medication, ending with an extreme measure if all else failed: ‘the last remedy is to slit the skin and open the skull’.³⁹

The sicknesses of the middle ventricle of the brain, which Gilbertus describes as witlessness and mania,⁴⁰ Bartholomaeus calls the ‘madness of melancholy’.⁴¹ Bartholomaeus describes this condition in often the same language as Gilbertus, though far more thoroughly.

First the colour of the skin changes to black or blue [...]. By the quality of the humour the patient is feint — and fearful in heart without cause [...] & often sorry. And that is through the melancholy humour that can strengthen and close the heart. And if we ask [them] what they fear, or why they are sorry — they have no answer. [...]. Some love and desire death. [...] Galen says, it is no wonder [that] they that suffer black bile are very sorry, and have suspicion of death. For nothing is more dreadful outside the body than darkness. And so when any dark thing [attacks] the brain, [such] as melancholy — the patient must be [filled with] dread [...] he dreams dreadful dark dreams and [is] very ill to see — and of stinking savour and smell. Of which is the dreaded suffering of melancholia.⁴²

³⁷ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 14.

³⁸ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 14.

³⁹ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 16.

⁴⁰ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 6.

⁴¹ Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa, bk IV, chap. 11, pp. 31^r–32^r.

⁴² ‘Fyrste the colour of the skynne chaungeth into blacke or bloo: Soure sauour, shape / and erthy is felt in the mouth. By the qualite of the humour the pacient is feynthe / and fereful in hert without cause. And so all, that haue this passion, are ferefull without cause, & oft sory. And that is through the mel[n]coli humour that co[n]streineth & closeth the herte. And so if we aske

Bartholomaeus continues to explain that melancholy, the humour, creates a type of madness affecting the emotions — '[An afflicted person] always laugh[s] at sorrowful things and become[s] sorrow[ful] and sad for joyful things [...]'. He says they talk too much or not at all at inappropriate times and, like Gilbertus, describes this feeling of the world falling out from under them and of seeing enemies in the people around them. Bartholomaeus also describes the psychotic behaviour of patients believing they are cocks, horses, or cats. He writes, 'Moreover in punishment of sin, Nebuchadnezzar was punished with such a pain — as it is written in stories, that vii years he thought he was a beast

of suche heuy folkes / what they fere, or wherfore they ben sory / they haue none answer. Some wene that they shoulde dey anone vnreasonably: Some drede enmyte of some ma[n]: Some loue and desyre dethe. Wherfore in li. *Passionum Galen[us]* sayth It is no wondre, though they that suffre coleram nigram be very sorye, and haue suspeccion of dethe. For no thyng is more dredefull outwarde in the bodye than derkenesse. And so whan any derke thyng heeleth the brayne / as melancoly flewme / the pacyent muste nedes drede. For he beareth with hym the cause why he shulde drede. And therfore he dreameth dredefull darke dreames / and verye yll to see / and of stynkyng saour and smelle. Of whiche is dredde passio melancolia. Also hit commeth of a madnesse / and of disposytion of melancolie, whan suche haue lykyng and laughe all waye of sorowfull thynges / and make sorowe and dolour for ioyfull thynges. Also suche holden their peas whan they shulde speake, and speake to moche whan they shulde be styll. Also somme trowe, that they benne erthyn vessels / and drede to be touched, leest they breke. And some wene, that they close the worlde in theyr fiste, and in theyr hondes to conteyne all theynges; and therfore they putte not oute their handes to take meate: for they drede that if they shulde putte forthe their handes / partes of the worlde shulde falle and be loste. Also some wene that an angell holdeth vp the worlde, and wold for werynes that the world falle. And therfore they heue their hondes and sholders to holde vppe the worlde, that semeth to them is in poynt to fall: and brayen strongly / and stryue yf phisitiens make them holde downe their hondes. Also some wene that they haue no heedes, and some wene that they haue leden heedes / or asse heedes, or som other euyll shapen fascion. Also there be other / whiche if they here cockes crowe, they rere vppe theyr hondes and armes / and smyte them selfe, and syngyng thynte them selfe to be cockes: and atte the laste they bene hoorse for greatte cryenge, and dompe also. Also somme falle into euyll suspicions without recouer: & therfore they hate / blame, and confounde theyr frendes, and sometyme they smyte and slee them. Melancoly men falle in to all these and many other wonderfull passyons, as Galen, Alisandre, and many other auctours saye, the whiche passions it were to onge to reckon all. And thus we se all daye / as hit felle late of a noble man, that felle in to suche a madnes of melancolye / that he in all wyse trowed / that he was a catte. And therfore he wolde no where reste but vnder beddes these cattes wayted after myse. More ouer in punysshment of synne, Nabugo donosor was punysshed with suche a payne / as hit is wryten in storyes, that vii. yeres hym semed that he was a beest through dyuers shappes, like a lyon / an egle, an oxe, and other. [¶] Nowe haue we treated sufficently of melancoly, and of other humours kyndly and vnkyndly, as hit apperteyneth to this werke at this tyme'; Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa, bk iv, chap. 11, pp. 31^v–32^r.

through divers shapes like a lion, an eagle, an ox, and others'. Illnesses affecting the middle part of the brain, therefore, could bring on both psychotic and neurotic behaviour, changes in emotion, decreases in mental ability, cognitive difficulties, discernment issues, and sleep disorders. Late medieval physicians called these conditions mania, melancholia, or witlessness.

The posterior of the brain controlled the memory, as maintained by all medieval physicians. A loss of memory indicated a humoral ailment that would bring on mental vacancy and folly, which physicians often called 'lethargy'.⁴³ Gilbertus writes, 'Lethargy is a sickness that makes a man so forgetful, that when he has done a thing, he does not have any memory that he did it'.⁴⁴ According to Gilbertus, lethargy patients might have a continual fever as well as being forgetful and sleepy, which Bartholomaeus calls stupor.⁴⁵ Some patients might develop something Gilbertus calls 'cold frenzy', which is an inability to control certain motor functions, like an open mouth that they cannot seem to close. If the face or limbs begin to tremble and the patient begins to sweat, Gilbertus says these are signs that death is near.⁴⁶

Physicians concentrated on those persons who were ill. They rarely if ever mentioned those born without an ability to remember or think or act without harming others. Physicians dealt with 'normal' persons who had become sick, which manifested as a type of mental illness. It is import, though, to think of these treatments as the latest in medical advancements of the age. They mention correlations with the biblical text, but that did not drive their attempts to diagnose or treat their patients. These medical professionals recognized a physiological problem with the brain and sought to treat it through medicine, diet, and other interventionist measures.

Administrative Understanding

In their 'tests' for sanity, English investigators asked questions involving recall, memory, general awareness, and reasoning abilities. They also made note of aspect, emotional appropriateness, and intelligence. All of these characteristics of a mental state gave officials indications of the questioned person's mental health or 'sanity'. The administrators made no attempt to 'diagnose' a per-

⁴³ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, pp. 16–20.

⁴⁴ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 16.

⁴⁵ Bartholomaeus Anglicus, *De proprietatibus rerum*, trans. by Trevisa, bk VII, chap. 7, p. 87^v.

⁴⁶ Gilbertus Anglicus, *Healing and Society*, ed. by Getz, p. 17.

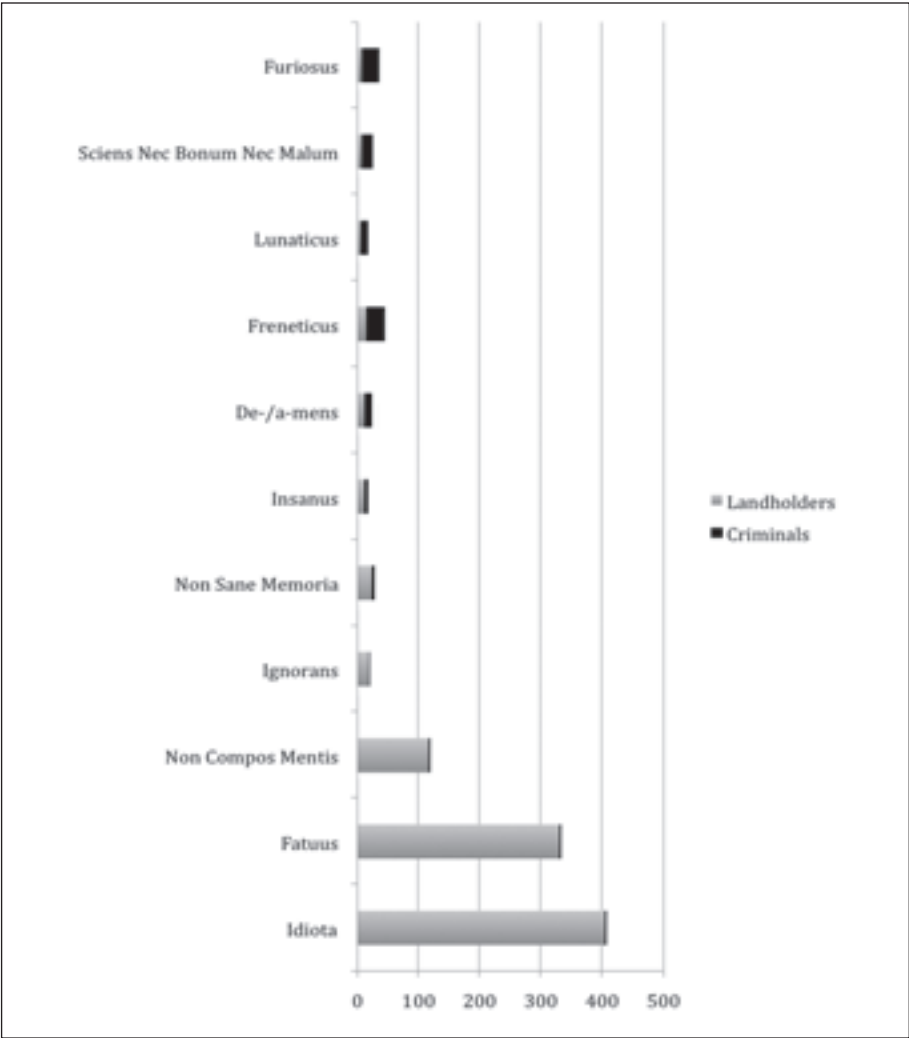


Figure 1. Ordered Proportion of Terminology for Mentally Incapacitated Landholders and Criminals

son’s medical condition and no medical professionals were consulted. Instead, administrators used methods of categorization that linked the individual with terms that described his or her mental condition based on external behaviour and qualities of cognition. Generally these terms were *related* to a person’s medical condition; though, *medical* diagnosis and conditions had no direct bearing on a case. Rather, persons with certain mental conditions — disabling ones in particular — the crown judged as in need of special legal handling or provisions.

Those judging mental health in civic situations did not refer to parts of the brain; instead, they used terms to fit the conditions, actions, and temperament of each individual before them. When the terms used for criminals and landholders are compared proportionally, the terms order from the most violent to the most passive (see Figure 1). This ordered ratio of terms, coincidentally and importantly, ranges in the same pattern as medical terminology and configuration (see Table 2). The terms graded from most aggressive and active to the most passive. This gradation — from aggressive to passive — parallels quite closely the front to back understanding of the brain among the medieval medical and church communities.

Table 2. Spectrum of Medieval Mental Health Conditions

Medieval Brain Theory	Medical Terms	Ecclesiastical Terms	Legal/Administrative Terms
Front	Mania	Mania	<i>Furiosus</i>
			<i>Sciens nec Bonum nec malum</i>
	Lunatic		<i>Lunaticus</i>
			<i>Freneticus</i>
Middle	<i>Demencia</i>	<i>Demencia</i>	<i>Demencia</i>
Back			
	Witless/ Stupor/ <i>Melancholia</i>	<i>Non sane memoria</i>	<i>Non sane memoria</i>
			<i>Ignorans</i>
			<i>Non compos mentis</i>
	Lethargy		<i>Fatuus</i>
<i>Idiota</i>			

There were many calculations of terminology for this study. First, the frequency of term usage in 655 manuscript pieces was analysed. Individual ‘manuscripts’ often have multiple ‘pieces’, and each piece was counted as a separate document. There were 1593 terms for mental conditions from Public Record Office manuscripts in The National Archives between 1200 and 1500. The average per annum was 5.3 terms. In many of the early years no terms or cases could be found; the highest count was 83 terms in 1397. Certainly error was accounted for, which fluctuated because of medieval record keeping, unreadable data, and

modern error.⁴⁷ Then, a statistical calculation for both the terms used most to least for each group — landholders and criminals — calculated the count from most to least used terms for each group. Finally, to create the chart in Figure 1,⁴⁸ a second calculation determined the ratio of use. This was most revealing. The ratio closest to 50:50 was the term *insanus* with the ratio becoming ever wider in either direction toward terms most used for landholders or criminals at opposite ends of the spectrum. This gradation corresponded nicely to both descriptions of aggressive to passive in English legal commentaries and to the front to back arrangement of physicians, as shown in Table 2.

Those mentally incapacitated persons committing crimes were nearly always described as being (in order by frequency of use, as in Figure 1) *furiosus*, *sciens nec bonum nec malum*, *lunaticus*, *freneticus*, *demens* or *amens*,⁴⁹ *insanus*, or *non sane memoria*; whereas, those persons born with impaired mental abilities were described at the opposite end of the scale (in order by frequency) *idiota*, *fatuus*, *non compos mentis*, *ignorans*, *non sane memoria*, or *insanus*. *Insanus* lies at the centre of the scale in part because it was the most neutral term and because both the criminally insane and the impaired both could be referred to by this general term. Furthermore, this is one of the terms — as well as *non sane memoria*, *non compos mentis*, and *ignorans* — that administrators used in conjunction with other terms or descriptions of a person in order to describe their inability to discern, reason, or remember.

The inability to discern or a loss of imagination or self-control would have started physicians looking for causes that might effect the front part of the brain; whereas, court officers would not have investigated reasons for the individual's state, but rather would have acted to protect the person and his neighbours from harm and, possibly, directed someone to become that person's keeper. They would have used terminology that expressed a lack of discernment as the cause for such a person's crime or inability to fulfil his or her responsibilities in society. A person who was unable to explain where he was or how to get home, had poor recall, and lacked imagination, might be referred to in administrative records as a *demens* (or *amens*). If, along with an inability to sense his surroundings, the individual became out of control and unrestrained, the

⁴⁷ By that I mean, manuscripts 'missing' in the archive or my own record-keeping errors. Nevertheless, even with a 15 per cent error corrective, the statistics are significant.

⁴⁸ The chart in Figure 1 is adapted from earlier research. See Turner, 'Defining Mental Afflictions'.

⁴⁹ These two related terms were tabulated together in my studies.

officials would call him *freneticus*, or if he lacked all control, a *furiosus*. If this behaviour were cyclical, he was a *lunaticus*. A person demonstrating a lack of discernment was not called by the medical term *maniac*, but instead described as *sciens nec bonum nec malum*, knowing neither good nor bad. Regularly, administrative and court records used combinations of these terms and phrases to best describe the person standing before them.

Crown records did not frequently use witless, stupor, or variants of *wode*; they referred to those persons unable to reason as *non compos mentis*, *ignorans* (unintelligent), or *insanus*. Witless and *wodeness* were both Middle English terms that generally meant lacking good sense. *Non compos mentis*, literally ‘no mental control’, was the closest equivalent in Latin, the language of most of the administrative records and would have been invoked when there was an inability to use the skills of cognition or estimation. Those records written in legal French do, upon occasion, have ‘deprived of sense’ or a variation of that phrase.⁵⁰

An individual born with a mental impairment or who became what medical persons would have called ‘lethargic’, English records labelled *idiota* or *fatuus*, and equated this condition to a ‘childlike’ or simple thinking person. Sometimes administrative records used the rather generic *non compos mentis* or *non sane memoria*, linking it even closer to the posterior of the brain and medical theories of a loss of memory, but not to the medical terms or theories. Because memory and ‘recall’ (imagination) were related in how people perceive the world, within administrative parlance many of the same terms for a lack of memory (posterior of the brain) or a lack of imagination (anterior of the brain) were the same, which was not the case within medieval medical circles. Administrators, again, were not in the business of diagnosing a person’s ailment; they wanted a way to classify why this individual was given something other than the normal treatment — either as a criminal or heir.

Administrative records made note of epileptics, though they were not considered mentally incapacitated. For example, John Romesye ‘has been of sound mind from his birth until now, but when he was 15 he fell into a falling sickness’.⁵¹ John was of ‘sound mind’ and the court upheld the enfeoffment he had made to Alan Plogenet because John continued to have the right to make contracts, which a mentally incapacitated person would not. John was neither

⁵⁰ Bertraya Le Strange is labelled a fool (*fole*) in the Legal French record. Kew, TNA PRO, SC 8/45, membr. 2243. The author of *Britton* made little distinction between a *sot* (*idiota*) and a *fol* (fool, *fatuus*). He does use the phrase ‘deprived of sense’ (*sauntz sen*) a couple of times. See *Britton*, bk vi, chap. 5, § 2 and Chapter 2 above in this volume.

⁵¹ Kew, TNA PRO, C 133/92, membr. 4; and *CIPM*, III: 20–28 *Edward I* (1912), no. 548, p. 423.

impaired nor disabled; he had the 'falling sickness'. Administrative records almost never mentioned headache, or other medical conditions, in association with the mentally ill or impaired. There was an occasional mention of illness, fever, or injury as a way of explaining what brought about a change in a person's mental state, but nothing specific. Also, although coroners, sheriffs, or others might have brought in physicians or midwives to examine someone who claimed pregnancy or some other medical condition that had bearing on a case, these same administrators did not bring in medical experts to examine the mentally incapacitated.

Determining Self-Control and Sensation

There are two types of self-control: physical control and emotional control.⁵² Both types gave administrators indications as to a person's mental state. A person's ability to be emotionally relevant or physically controlled was the dividing line between sanity and mental impairment.⁵³ A person without physical control of his actions could harm members of the community, and as a *furiosus* or *freneticus*, he would need to be restrained. For example, Roger Swein managed to kill five persons while raging in a 'fit of madness' before another person killed him.⁵⁴ This violent outburst was not out of anger or revenge for some wrong, this man was a *furiosus*, a madman, at the far end of the administrative scale and in the midst of a fit of some kind.

Emotional control spoke to administrators of other mental problems. William de Percy of Kildale lost control of his emotions during an inquisition into his lands.⁵⁵ William had grown somewhat forgetful in his elder years. He had gifted several properties to family and friends in recent years. The inquisitors wrote that they examined William and that during their questioning he answered while 'softly weeping'. He had no idea 'how his son William entered his manor of Kildale, nor how he himself was ejected', and obviously of unsound mind to the inquisitors, he 'begged peace from them [...] that they would not stop him from returning to his manor of Kildale'. He wanted to

⁵² On emotion in the Middle Ages, see: *Anger's Past*, ed. by Rosenwein; Shaw, *Necessary Conjunctions*, pp. 123–32; Sorabji, *Emotion and Peace of Mind*; Knuuttila, *Emotions in Ancient and Medieval Philosophy*.

⁵³ Turner, 'Silent Testimony'.

⁵⁴ 'Shropshire Eyre, A. D. 1203', in *Select Pleas of the Crown*, ed. by Maitland, no. 70, p. 31.

⁵⁵ Turner, 'Silent Testimony', p. 89.

return to Kildale manor. William was emotionally distraught and confused if nothing else. In the end, the inquisitors found William ‘wholly impotent of body and not of sound mind.’⁵⁶ The descriptions — of William crying in public and of him begging peace before the inquisitors — support the decision to find William ‘impotent’ of mind.

The two, emotion and physical action, were sometimes linked in the records. Obviously, William’s tears were physical but speak to something internal and emotional such as distress or sadness. In his case, it was his overt display that signalled mental confusion and impairment to the investigation team. Yet, physicality could become dangerous, as with Roger Swein, above, who murdered five men. In another example, Robert Barry of Tothale (the younger) had a dual of swords on the front lawn of his home with his father, Robert (the elder), who had become mentally unstable in 1346.⁵⁷ Investigators explained that Robert the younger had an argument with his father, Robert the elder. He had been in his elder’s sister care until several years into Robert the younger’s majority, when the sister was found to be stealing from the property of her brother, and the crown ordered the lands into the heir’s control, while his person remained in the sister’s control.⁵⁸ With the son now in charge of the estate, much like William above, perhaps there was some disagreement over property rights or procedure, whatever the argument, in 1366, Robert the younger became ‘infuriated’ (*in toto furiosus*), wounding his father in the arm with the sword and on the head with a rock. The investigators said that Robert the younger was not to blame, after all no one died, and the adult son had been ‘induced by fear of his

⁵⁶ 1285; Kew, TNA PRO, C 133/42, membr. 14; *CIPM*, II: 1–19 *Edward I* (1906), no. 584, pp. 347–48.

⁵⁷ Kew, TNA PRO, C 66/260, membr. 30 (*CPR: Edward III*, XI: 1358–1361, 429) and Kew, TNA PRO, C 66/262, membr. 24 (*CPR: Edward III*, XI: 1358–1361, 543). See also the minority wardship of the younger: *CIPM*, x: 26–34 *Edward III* (1921), no. 492, pp. 388–89.

⁵⁸ In most of the documentation the father is named as Simon or Simon Barry married to one Joan. In a few cases, the father is named as Robert. Robert’s son is another Robert and that may be where the confusion began. Kew, TNA PRO, C 66/260, membr. 30; Kew, TNA PRO, C 66/262, membr. 24; Kew, TNA PRO, C 66/263, membr. 25d; Kew, TNA PRO, C 66/268, membr. 16d; Kew, TNA PRO, C 66/273, membr. 38; Kew, TNA PRO, C 135/143, membr. 6; *CIPM*, x: 26–34 *Edward III*, no. 492, pp. 388–89; no. 664, p. 557; *CPR: Edward III*, XI: 1358–1361, 429, 543; *CPR: Edward III*, XII: 1361–1364, 69. Kew, TNA PRO, C 66/263, membr. 25d (*CPR: Edward III*, XII: 1361–1364, 69); Kew, TNA PRO, C 66/268, membr. 16d (*CPR: Edward III*, XII: 1361–1364, 450); and quotation from Kew, TNA PRO, C 66/273, membr. 38; *CPR: Edward III*, XIII: 1364–1367 (1912), 223). See also, *CIM*, III: 1348–1377 (1937), no. 612, p. 226, which lists the damage by his sister and her husband.

father, who is possessed by an evil spirit' (*ductus est per spiritum maledictum*).⁵⁹ Robert the younger's actions were justifiable faced with his uncontrolled father; his father's mental affliction and 'possession by an evil spirit', describe how out of control his father had become. The terminology used to describe the son, *in toto furiosus*, was language of 'insanity', and implied not only rage. It was almost as if the son might have acted a little like his father on this occasion, which may have exacerbated the situation. The record makes the instance sound as though the son lost control of his emotions — incited by the 'evil spirit' in his father — but which he should have known was inappropriate when dealing with his unstable father. 'Evil spirits' are not often mentioned in administrative documents in medieval England, and their appearance here was probably important. The administration seems to have wanted a sound reason, and evil spirits were as sound as they could get, to excuse the violence of Robert the younger.⁶⁰

Violence connected to an inappropriate emotional response is evident in the homicide by the clerk Richard Pessonier. He murdered his friend, Brother Walter, in his sleep in 1285. Walter had gone to bed after dinner in the chamber he shared with Richard, who was ill. Sometime in the night, Richard woke up and 'frantic and mad' killed Brother Walter,⁶¹ then ran to tell the other monks. The royal officials called in to investigate described Richard's action as under 'the instigation of the devil'.⁶² They wrote that Richard 'smote Walter on the head as he slept [...] [until his] brains (*cervices*) came out'.⁶³ Richard's reaction was to laugh. The ill murderer had told the monks '*laughing*: "I have killed my dear master, Brother Walter: come and see where he lies slain; he will never speak another word"'.⁶⁴ Richard's laughter grated against his message. His inappropriate emotion did not fit the situation and this emotional state indicated to officials and witnesses that he was mentally unbalanced.

⁵⁹ *CIM*, III: 1348–1377, no. 635, p. 235.

⁶⁰ Pfau, 'Crimes of Passion'.

⁶¹ Kew, TNA PRO, C 145/44, membr. 40; *CIM*, I: 1219–1307 (1916), no. 2279, p. 609.

⁶² Kew, TNA PRO, C 145/44, membr. 40; *CIM*, I: 1219–1307, no. 2279, p. 609.

⁶³ Richard hit Walter with at least two objects, once with a 'form' (*formula*) and once with a 'trestle' (*trestello*). Kew, TNA PRO, C 145/44, membr. 40; *CIM*, I: 1219–1307, no. 2279, p. 609. Michael Goodich notes in his introduction to *Other Middle Ages: Witnesses at the Margins of Medieval Society* that there was a 'belief in the real presence of the Devil and in his attempts to gain control of the weak — infants, suicides, the mentally distressed, and so on', which seems true in the records concerning Richard's illness and subsequent murder. *Other Middle Ages*, ed. by Goodich, p. 11.

⁶⁴ Kew, TNA PRO, C 145/44, membr. 40; *CIM*, I: 1219–1307, no. 2279, p. 609; my emphasis.

The opposite, a lack of any emotion, could indicate mental instability. In criminal records, this could describe someone who was mentally ill, and was used to explain the motivation behind a crime. Henry de Yuehust admitted to stealing while mad; his honesty about a dishonest action suggested to the investigators the reality of his mental innocence, and he was acquitted.⁶⁵ Catherine Ronges stood accused of murdering of another woman. She supposedly bludgeoned the woman over the head with rocks and sea-coal. Her neighbours said, that Catherine 'met Alice at the heath in the aforesaid vill [Maldon] and struck her on the head with great tiles and with sea-coal, and afterwards threw her into the sea, and thus she [Alice] came to her death'.⁶⁶ The lack of any reason for the homicide and a lack of emotion on Catherine's part according to the testimony of her neighbours, gave the jury no reason to question her guilt or her status as a *non compos mentis*.

In an investigation of a landholder's status, royal administrators found that an heir, Elizabeth Polglas, had been effectively hidden from the crown. Within 'three days' of her father's death, she had been married off to one of the leaders of the town and, when he had died, the leadership had found her another husband two days later. She should have become a ward of the crown after her father's death, since she held property and was an *idiot*. Yet, in order to keep the property and the profit from the property in the hands of local town authorities, they were passing her from person to person. The immediacy of her marriages, without a period of mourning or courting, lent credibility to the foundation for the investigators' argument that she was mentally incapacitated and had been taken advantage of for her inheritance.⁶⁷

The record of another investigation into a possible mental incapacity of a landholder contained interesting perceptions on the part of the officials. They described John Heton as cut off from reality both emotionally and sensorially. They wrote that until he twenty-four years old, John had been 'in good sense and quite sane'. From then until the time of the hearing, John had been an *idiot* without interval, 'insensible to his surroundings (*non compos mentis sue in omnibus que ad humanum sensum discerni deberet*), having a fancy in his head, whereby he remains unconscious of his own personality (*bone memorie sui ipsius negligens*) and paying no heed to anything at all'.⁶⁸ The revelation

⁶⁵ Kew, TNA PRO, JUST 1/775, membr. 18.

⁶⁶ *Select Cases from the Coroners' Rolls*, ed. by Gross, pp. 46–47.

⁶⁷ Kew, TNA PRO, E 149/64, membr. 13; Kew, TNA PRO, C 145/255, membr. 22; and *CIM*, vi: 1393–1399 (1963), no. 85, pp. 40–41.

⁶⁸ 1353. Kew, TNA PRO, C 135/125, membr. 25; *CIPM*, x: 26–34 *Edward III*, no. 142,

here is that the officials judged his condition as emotionally bereft, withdrawn, and negligent of his own needs. The investigators explained the depth of the disability of John's psychological affliction as they made a case to provide him with a guardian. The emotions John displayed were irrelevant to the setting, and he appeared disconnected from those around him, indicative of his mental incapacity.

Emotions and actions when inappropriate were used as evidence in conjunction with other evidence — either a test or demeanour — to prove or disprove allegations of mental incompetency. Officials paid attention to physical and mental presence at court, past behaviour, and self-control. Certainly all people might be inappropriate at times, laughing at having killed someone, for example, but most do not continue that behaviour for long — realizing that they are out of control, they fight to regain composure or move on to more appropriate reactions — tears, fear, satisfaction — within the realm of sanity.

Determining Cognitive Ability

Today, testing for the ability to think is difficult, and it was much more so in the Middle Ages. The IQ test, inaccurate as it may be, gives some indication of an individual's ability to cogitate and calculate based on societal and cultural standards. Medieval administrators asked questions that used some critical thinking skills when they doubted an individual's reasoning capabilities were functioning well enough to be responsible in society. Asking the person to give directions was one such tact — that is, if they knew where they were, which would have been one of the first questions. Asking the individual in question to make proper change in coinage — basically a simple mathematical exercise — was another.

When investigators found a person incapable of these types of thinking skills, he or she was often labelled as *ignorans*. One such person, questioned in 1420, was Thomas atte Wode,⁶⁹ whom they found to be 'ignorant' as well

pp. 132–33. See also: Kew, TNA PRO, C 66/240, membr. 19d; Kew, TNA PRO, C 66/245, membr. 13; *CPR: Edward III*, ix: 1350–1354 (1907), 511; and *CPR: Edward III*, x: 1354–1358, 200–01.

⁶⁹ Throughout the medieval records his name is consistently 'atte Wode'. The National Archives' records have updated this name in all places if searching in their database or index; he is now found in modern records as 'Atwood'.

as ‘foolish and idiotic’ (*ignorant [...] fatuitatis et idiota*).⁷⁰ Thomas’s lands had fallen to a neighbour, the abbot of St John’s Colchester, who was collecting the rent and keeping it. The king’s officials searched out the holding, finding that it was the inheritance of Thomas and placed him in royal care.

Finding someone unintelligent (*ignorans*) was sometime the case when an inheritance was involved, as with Thomas atte Wode above. In another inheritance case, Joan Jordan was also discovered to be *ignorant*.⁷¹ She was the heiress to a business and several buildings in London, and her case got lost between the city authorities and those of the crown. In 1396, John Berghdon lands were placed under the crown’s guardianship because John was found to be *fatuitatis* and *ignorant*.⁷² When he died in 1414, his lands were still in the crown’s custody, which had placed them into the guardianship of the abbot of Peterborough. The inquisition tested and questioned John Heton, whom it seems was ‘an idiot lacking intelligence and not mentally competent’ at the age of twenty-four. He was also placed in royal wardship having several guardians.⁷³

Officials did not often use *ignorans* as a way to describe the mentally incapacitated, though it was also not uncommon. This term of ‘unintelligent’ must have been reserved for particular behaviour — the lack of an ability to think about the world critically, a lack of insight, or ability to cogitate. As in the examples above, many times this descriptor of unintelligent was used in combination with other apparent problems — memory difficulties or foolish behaviour. Alice (Saitby) Fyssh was described as a ‘natural fool and idiot [...] who is unintelligent’ (*est naturalis fatua et ydiota [...] ignorant est*).⁷⁴ An *idiota* certainly would have had not just memory problems, but thinking difficulties as well.

⁷⁰ The passage in which Thomas is questioned and found ‘ignorant’ is in Kew, TNA PRO, C 138/44, no. 10.4. See also Kew, TNA PRO, C 139/108, no. 6; Kew, TNA PRO, E 149/102, no. 7; as well as *CIPM*, XXI: 6–10 *Henry V*, ed. by Kirby and Stevenson (1995), nos 396–99, p. 119; and *CIPM*, XX: 1–5 *Henry V*, ed. by Kirby (1995), no. 275, p. 90.

⁷¹ Kew, TNA PRO, C 260/125, membr. 11b. I have examined this case in depth in Turner, ‘Town and Country’, pp. 20–30, 36.

⁷² See Kew, TNA PRO, C 138/6, membr. 6b where his is listed as *ignorant* in 1415. See also the rest of that file and Kew, TNA PRO, C 139/121, membr. 10; Kew, TNA PRO, E 149/66, no. 12; Kew, TNA PRO, E 149/105, no. 8; *CIM*, VI: 1393–1399, no. 167, p. 79; and *CIPM*, XX: 1–5 *Henry V*, no. 147, pp. 48–49.

⁷³ Kew, TNA PRO, C 135/125, membr. 25. See also *CPR: Edward III*, IX: 1350–1354, 511, and X: 1354–1358, 200–01.

⁷⁴ Kew, TNA PRO, E 149/ 214, no. 3. See also Thomas Erons, Kew, TNA PRO, JUST 1/858, membr. 32 (org. 33), also described as an *ignorant* person.

Determining Memory

The administration used a combination of questions in their investigations, watching for emotional and physical control, emotional relevance, cognitive ability, reason, and memory.⁷⁵ When it came to investigating memory, they concentrated on details that should be commonly known about life, occupation, family, and the town. Questions to test a person's memory were probably the most common ones. These questions were easy to ask, and many are still used today with head-injury victims. 'What day is it? Where are we? What's your spouse's name? How many children do you have?' All of these types of questions involve recall, testing whether a person can remember the important things around them. Lesser important things were secondary, even in court — such as the names of your neighbours or guild leaders. Those questions never come up because they would not be a good test.

People were not always tested; sometimes a lack of memory was obvious. A good illustration of an individual with a weak memory and an inability to move beyond his current responsibilities was John Dychton. The escheator was investigating John's brother-in-law, Peter Seyvill, in 1286. Peter, it turned out, was a *freneticus idiota* in need of a guardian, and the escheator was prepared to entrust John with the guardianship. John was to deliver papers to that effect to Westminster, but he never delivered them. Maybe he got lost or distracted. The escheator, though, seemed angry when he wrote that John was 'incapable' of having responsibility in 'tenement', implying the guardianship tenements, and further that he was 'weak in knowledge and reason'.⁷⁶ The escheator corroborated his statement by getting testimony of 'trustworthy knights and of the jury' to underscore his point. The hesitation of the escheator was clear — if John had become lost, why did he not ask directions, and if he became distracted, why not rush to get the paperwork delivered? Why return after weeks with the paperwork still in hand? John had enough memory and intelligence, it seems, as long as he remained local. The long journey seems to have been too much for him to handle, as would — in the estimation of the escheator — a guardianship.

The opening statement on Emma Beston also depicts her as having some understanding but not memory. She knows there are seven days in a week but

⁷⁵ On memory in the Middle Ages, see: Carruthers, *The Book of Memory*, and *Medieval Craft of Memory*, ed. by Carruthers; Shahar, *Growing Old in the Middle Ages*, trans. by Lotan, pp. 72, 82; Geary, *Phantoms of Remembrance*; Reiss, *Mirages of the Self*, pp. 243–97.

⁷⁶ Kew, TNA PRO, C 133/46, membr. 2; CIPM, II: 1–19 *Edward I*, no. 611, pp. 373–74; and CFR, I: *Edward I, 1272–1307* (1911), 230, where his name is spelled John de Eton.

not the names of the days, and she knows she has had three husbands, but again, does not know all their names. The leaders of the town claim that she is not mentally incapacitated; and, perhaps she could reason to some degree but had no ability to remember. The fact that during the questioning, even if nervous, she did not know the difference between silver and copper, would have been one of those answers that investigators would have noticed as peculiar if not inept. When the royal made their report, they added certain phrases as to leave no doubt that she needed a guardian, finding that 'she was not of sound mind, having neither sense nor memory nor sufficient intelligence to manage herself, her lands or her goods'.⁷⁷

Many of the questions concerning long-term mental disabilities were based on memory, or lack thereof; these questions explored both a basic knowledge of society and an awareness of the past. Yet, many people have a poor memory or bad judgement. They might have been considered inept, but they were not considered mentally incapacitated or impaired, much like John Dychton, who seemed fine at home where he knew the people and the area. He might have been simple or have had a weak memory, but was capable enough.

In a few cases, something changed in a person's health or life, causing a change in their memory. Old age was one factor, as with William de Percy above, who wept in court not remembering giving away his lands. Other reasons include illness. For example, Robert de Corbrige travelled to Oxford, possibly to study, though the record does not say. He was gone for a year and when he returned, 'he was an idiot',⁷⁸ without memory. The investigation was sixteen years after his return and no one now seemed to know what had happened to change Robert. In another example, Bartholomew de Sakevill lost his memory when he was struck 'on the head',⁷⁹ apparently in battle. In another record, the king was asked his opinion as to what to do with one particular man in custody who claimed to be a murder and yet had committed no crime.⁸⁰ His memory of a crime was incorrect, why and how he came to have this confusion is not even hinted at in the brief record.

⁷⁷ *CIM*, IV: 1377–1388, no. 227, pp. 125–26.

⁷⁸ Kew, TNA PRO, C 135/34, membr. 4; *CIPM*, VII: 1–9 *Edward III* (1909), no. 491, p. 349.

⁷⁹ Kew, TNA PRO, C 66/110, membr. 4; *CPR: Edward I*, III: 1281–1292 (1895), 446. See also: Kew, TNA PRO, C 66/109, membr. 25. For more information on Bartholomew, see Turner, 'Mental Incapacity and Financing War', pp. 388–92.

⁸⁰ *Placita corone*, ed. by Kaye, no. 113, pp. 66–67.

Will writing came into its own in the late medieval period. People did not write only 'of sound mind'; they employed the phrase: 'being of sound mind and memory'. John Nottingham, for example, included in his will, 'being of sound mind and good memory' (*sane mente ac bona memoria*),⁸¹ as did John Baret who included the phrase of 'good mynde and memorye'.⁸² These authors wished no one to question their decisions for the future of their estates and, to make that quite plain, they needed to state clearly that they were able in mind to make sound decisions,⁸³ and that meant they needed to be emotionally stable, reasonably intelligent, and reliable in memory.

* * *

Both mentally ill criminals and incompetent landholders were put through a series of examinations and investigations as to their mental health. The series of questions tested their ability to sense, discern, cogitate, calculate, and remember. These questions might be put the individual by any number of people, but most especially by the escheator in the fourteenth and fifteenth centuries.

These questions were not medical ones, and yet fall into the three basic areas physicians explored as mental illness. As medieval medical experts understood it, there were three areas of the brain. The anterior ventricle assessed sensory input. It could also discern, approximate, and imagine. The middle 'cell' of the brain controlled the ability of cognition. This part of the mind could cogitate as well as estimate and calculate. The posterior ventricle held the memory. Physicians speculated that those mental conditions exhibiting overly active symptoms — mentally or physically — generally were caused by something wrong in the meninges ('skins') or anterior ventricle of the brain. Those problems affecting a person's ability to use intelligent thinking were diagnosed as involving the middle of the brain. And, sicknesses affecting the memory or causing lethargy or listlessness were diseases of the posterior brain.

The terminology used by physicians was rarely if ever used by administrative officials, who were not doctors. Royal officials used their own vocabulary to

⁸¹ *Wills and Inventories*, ed. by Tymms, p. 5. For more on terminology, see Turner, 'Defining Mental Afflictions'.

⁸² 'But I wil that in no wyse noon ydiot nor fool occupye the seid goods, but refuse hym and take anothir that is next, [that] the seid name of Baret may contynwe goodly as longe as God wochesaffe'; *Wills and Inventories*, ed. by Tymms, p. 25 (his entire will is on pp. 15–44).

⁸³ Bracton, *Notebook*, ed. by Maitland, III, no. 1189, p. 205. See also Bracton, *De legibus et consuetudinibus Angliæ*, fols 14^v–15^r, lib. II, cap. 5, ¶ 9, and fol. 323^v, lib. IV, cap. 5, ¶ 10 (Bracton, *De legibus et consuetudinibus Angliæ*, ed. by Woodbine, II, 61 and IV, 36).

describe the mentally incapacitated, and this group of terms and phrases was on a scale from the most violent or active to the most passive. They tended, not surprisingly, to use more terms from the passive end of the scale for mentally incapacitated landholders and terms from the active end of the scale for those criminals attacking others or acting out in public. The scale compares nicely to the gradation of diagnosis by physicians, providing a glimpse into how medieval society classified various conditions and disabilities.

INVESTIGATING COMPETENCE

Whereas by inquisition made by the sheriff of Worcester by Robert de Timberhongre, William de Chauelingworth, Walter de Stanes and William de Abetot, whom the king lately caused to be sent to view the state of John son of Gerard de Inteberwe, the king understands that he has been kept in bonds for fifteen years because of his insanity and that he still labours under the same insanity [*insania*] so that he cannot rule himself or preserve his lands and possessions; the king has provided that [Amicia] wife of the said John may take action in the courts of the king or of others to recover in place of her husband any lands or possessions withdrawn from him since he fell into his insanity.

H. le Bigod, the justiciary, and the council.¹

John de Inteberwe suffered from a severe disability of *insania*; it was so extreme he had been kept bound for fifteen years for his own protection and the protection of those around him. In this patent document, several people had been called to examine him, guide him, and recover his property for him, including his wife Amicia. The sheriff investigated the condition of John with the aid of a four-man commission and their findings were reported back to the king by the justiciary, Henry le Bigod, and the king's council. All of these people — sheriffs, commissioners, judges, the council, and the king, as well as wives and other relatives — discussed, tested, examined, and heard testimony about the mentally impaired person in question long before a decision was made concerning guardians or keepers. This chapter looks at the role of these people,

¹ Kew, TNA PRO, C 66/73, memb. 2; *CPR: Henry III*, v: 1258–66, 46 (1259). The name of Amicia appears between the lines of text in the original, as if it were an afterthought.

and others, in the life, property, family, and status of every person investigated for competency.

Most investigations concerning land began with a query to the chancery, usually by an interested party, about the land of someone known to be or suspected of being mentally incapacitated. The chancery would send a writ, normally of *certiorari* (inquiry) to the king's official — sheriff, commissioner, or escheator — who would investigate the matter. If the person in question were indeed a mentally incapacitated landholder, the king would appoint a guardian to protect his lands,² and if without land, the person was left to himself, unless he became violent or committed a crime.

Criminals with mental conditions were 'tested' during their trial, but more often relatives, neighbours, and friends *attested* to their incapacity. Part of the gathering of information by the jury would inevitably bring out information that the person had been ill or mentally impaired for some period of time, even hours, before committing the crime in question. They were found guilty of the crimes they had perpetrated and yet were not considered felons; therefore, they were not punished as a felon might be, often with all punishment rescinded.³ Justices, sheriffs, and inquisitors throughout the Middle Ages systematically carried out this work.

Investigations and Second Opinions

The typical early fourteenth-century investigation into the competency of a landholder began with an original complaint to the court about care or custody of the land. The exchequer then sent a writ to the sheriff or a justice in the area to investigate certain holdings or persons.⁴ Until the investigation was complete, the local sheriff would confiscate and hold all lands and chattels of the person in question. He would take into custody anyone found obviously incapable of caring for his or her lands. The king or his official, would grant a member of the family who was not in line to inherit — or a neighbour if no family could be located — custody of the mentally incapacitated person's lands and the care of his person.

² For more information on the office of the escheator see particularly: Stevenson, 'The Escheator'; Waugh, 'The Origins and Early Development of the Articles of the Escheator'; Crook, 'The Later Eyres'; and Crook, *Records of the General Eyre*.

³ For more, see Chapter 5 below.

⁴ Kew, TNA PRO, C 54/126, membr. 17d (cancelled).

When the mental state of the person was not obvious, or if there were questions concerning the validity of the terms of the holding, the escheator would have a jury examine the case or send the matter to Westminster or both.⁵ This was a serious process in which the outcome was not predetermined and was subject to revision from case to case. Neither the crown nor his administration wanted to deprive a sane person of his or her liberties and property. The crown would, as it did with William Maureward, issue a warrant for his arrest and a writ for his appearance (1308) 'before the king's council at Westminster'. In this case, even though arrested as a 'madman and an idiot, [...] it is found that he is not a madman and an idiot, but is wise and sufficient for the government of his affairs, and so he is dismissed'.⁶ There are many other examples besides the Maureward case, such as John Herst who was also taken to Westminster before the king's council, 'for examination according to custom' for a second opinion, and he was also found *not* to be mentally incapacitated.⁷

A few mentally incapacitated persons in the late thirteenth and early fourteenth centuries answered questions at examinations before the king in the Chancery or in Parliament or a combination of these two.⁸ Inquiries could be carried out by a variety of persons, and hearings might be held on more than one

⁵ Kew, TNA PRO, C 260/13, membr. 6, Kew, TNA PRO, C 262/5, membr. 2, and *CCR: Edward II*, i: 1307–1313, 32.

⁶ *CCR: Edward II*, i: 1307–1313, 132 (3 December 1308).

⁷ *CCR: Edward II*, i: 1307–1313, 367 (22 July 1311). Others accused but found competent, include: Peter Champeneys (1305–questionable), *CIPM*, iv: 29–35 *Edward I* (1913), no. 326, p. 222; Ralph Pyrot (1305–sane), *CIPM*, iv: 29–35 *Edward I*, no. 325, p. 222; John Romesye (1299–falling sickness), *CIPM*, iii: 20–28 *Edward I*, no. 548, p. 423; Ralph Trelewith (1300–sane), *CIPM*, iii: 20–28 *Edward I*, no. 614, p. 492; John de Bernacastell (1382–sane), *CIPM*, xv: 1–7 *Richard II* (1970), no. 895, p. 353; John Besevill (1379–sane), *CIPM*, xv: 1–7 *Richard II*, no. 290, p. 117; Lucy Brygge (1385–questionable), *CIPM*, xv: 1–7 *Richard II*, no. 909, p. 357; Thomas de Grenestede (1342–sane), *CIPM*, viii: 10–20 *Edward III*, no. 340, p. 236; Joan Hayme (1393–sane), *CIPM*, xvii: 15–23 *Richard II* (1988), no. 276, p. 124; Eustacia Heselarton (1327–aged), *CIPM*, viii: 10–20 *Edward III*, no. 705, p. 515; William de Hothom (1354–questionable), *CIPM*, x: 26–34 *Edward III*, no. 206, p. 187; William Maureward (1308–sane), *CCR: Edward II*, i: 1307–1313, p. 132; William le Venour (1328–sane), *CIPM*, vii: 1–9 *Edward III*, no. 181, p. 148; Hamo de Waltham (1362–sane), *CPR: Edward III*, xii: 1361–1364, 277; William Hawkyns (1552–fake), *Calendar of State Papers*, ed. by Knighton, no. 746, p. 270.

⁸ 'Edward II: Parliament of January 1315, Text and Translation', ed. by Seymour Phillips, in *PROME*, ed. by Given-Wilson and others, item 180 (144), (i, 320). For the source, see also Kew, TNA PRO, SC 9/18, membr. 18d. This text concerns an *idiota* named John, son of John FitzHerbert of Edlington.

occasion so that the crown was certain of its decision before stripping someone of his rights and privileges. For example, Nicholas Glamorgan was examined at least twice and in both instances he could not handle the basic tasks necessary for managing property. Because Nicholas's lands were extensive and stretched over several counties, the king wanted to be sure of these charges before removing Nicholas as a functioning lord. The council originally found Nicholas 'to be an idiot (*idiot*), and incapable of managing his lands'. When they examined him again 'before the king in the chancery, [he has (again)] been found to be an idiot'.⁹

Those judging a person's state could include a variety of people and institutions: the king, the king's council, the chancellor, the king's commissioners, the escheator, the sheriff, or a combination of these. Escheators came to play the most significant role throughout most of the fourteenth and fifteenth centuries. In the later Middle Ages, the king, parliament, and the king's council continued to pass judgement on difficult or questionable individuals and for high-profile nobility.¹⁰

Sheriffs, commissioners, and escheators made the majority of the assessments of the late thirteenth, fourteenth, and fifteenth centuries, and the three offices worked together upon occasion. The Chancery might write to the escheator with questions about land issues, including those possibly held by the mentally deficient. The crown might send a commission to find out more information about the same person. The crown or Chancery could also contact sheriffs if and when the escheator was elsewhere, and sheriffs sometimes took control of the person in question and his lands in anticipation of the arrival of a court, commission, or escheator to investigate the situation fully.

Even in later cases from the mid-fourteenth century to the end of the fifteenth century, when the status of the individual labelled an *idiot* seemed to the escheator or other official to be inaccurate, inappropriate, or questionable, the individual was sent to Westminster for a second opinion.¹¹ Also, if someone

⁹ Kew, TNA PRO, C 135/67, membranes 17.1 and 17.6. See esp. *CIPM*, VIII: 10–20 *Edward III*, no. 713, p. 518.

¹⁰ John Warre of Rolleston was taken before the council in London for examination in 1350. Kew, TNA PRO, C 66/230, membr. 26d; *CPR: Edward III*, VIII: 1348–1350 (1905), 525; and, although later in time, an excellent example of 'high profile' was the arrest of William Hawkyns who feigned being 'frantic' to avoid having to confess to his part in rebellion by the counterfeiting of the archbishop's signature. *Calendar of State Papers*, ed. by Knighton, no. 746, p. 270.

¹¹ John Welyngton's son John was a minor and an *idiot*. It was not his mental state that was in question but his vast lands and estates and who should be governing them. Because much of these lands were in the king's demesne, a few special problems arose. The case continued to

questioned the decision of the escheator or other judge, the person was sent before the king's council or to the chancellor, who had the final judgement. It was routine during the reigns of Edward I and Edward II for the mentally incapacitated to go before the king's council; it would not be until the time of Edward III that this duty would shift to the chancellor.¹²

Once royal officials had determined that a person was mentally incompetent or unstable, they needed to know if the person had been born mentally incapacitated and if he had lucid intervals. The first, whether they were born or became mentally incapacitated, theoretically affected the income garnered for the crown from the wardships. On the one hand, if the individual was born in the state of mental incapacity, the profit from his or her lands belonged to the king. On the other hand, if the individual became feeble-minded later in life, the income was supposed to remain with the land for the next heir with only sustenance for the heir and his family and some compensation for the guardian taken out.¹³ In both cases, the king used part of the income for the sustenance of the mentally incapacitated heir and payment for a guardian, and sometimes a keeper or custodian.¹⁴ The crown did keep all of the further profit from the lands of those born mentally incapacitated.

The questions of the onset of insanity persisted as well as questions of whether the individual had periods of sanity on into early modern period in

unfold over many months with messages sent back and forth from Westminster to the chancery to the escheator to commissioners. See: Kew, TNA PRO, C 60/200, membr. 22; Kew, TNA PRO, C 60/204, membr. 21; Kew, TNA PRO, C 60/206, membr. 8; Kew, TNA PRO, C 60/217, membr. 6; Kew, TNA PRO, C 136/96, membr. 1; Kew, TNA PRO, C 137/86, membr. 25; Kew, TNA PRO, E 149/97, no. 11; *CFR*, xi: *Richard II, 1391–1399* (1929), 198–203; *CFR*, xii: *Henry IV, 1399–1405* (1931), 31–32, 134; *CFR*, xiii: *Henry IV, 1405–1413* (1933), 246; *CIPM*, xvii: *15–23 Richard II*, nos 937–49, pp. 344–48; and *CIPM*, xix: *7–14 Henry IV*, nos 946–51, pp. 337–39.

¹² Under Edward II, William Maureward was examined before the king's council at Westminster. They found him sane. *CCR: Edward II, 1: 1307–1313*, 132. See also John de Herst, *CCR: Edward II, 1: 1307–1313*, 367. Edward III still had Joan Wantyng seen by the council in the 1360s. *CPR: Edward III, xv: 1370–1374* (1914), 419. In 1376, John Jott was examined 'in the Chancery by John Knyvet, the chancellor, and others of the council' and found to be an *idiota*. *CPR: Edward III, xvi: 1374–1377* (1916), 294.

¹³ This division is in the *Prerogativa regis*. See: *Statutes of the Realm*, ed. by Luders and others; Brand, *The Origins of the English Legal Profession*, pp. 1–30; and Chapter 2 above.

¹⁴ For example: Mary (Mare) Baxster was listed as the *custodia* of the body only for John Thymolby; while, John Kyghley, knight, William Kyghley, and John Baylly were listed as the guardians of his many lands and two manors. See especially: Kew, TNA PRO, C 60/234, membr. 7 and *CFR*, xv: *Henry VI, 1422–1430* (1935), 180.

England. The king often placed the lands of those who became mentally incapacitated in the care of family members. The king allowed the excess income to remain with the land, though the guardian was to take some out as a stipend for his trouble. If there was any question as to when the heir became mentally incapacitated, of course, the person was identified as an *idiota* and king kept the profit, even when he had lucid intervals.¹⁵

The second question about lucidity affected whether or not these persons could get married or make other contractual agreements and whether or not they would have a continuous wardship. If a mentally incapacitated person had moments of lucidity, during times of mental control he could live normally to the full extent of that term. He could marry, have children, make contracts, sell land, and serve on juries: anything a regular member of society could do. If a landholder suddenly became unstable and the reason was known, for instance, a blow to the head,¹⁶ a guardian might temporarily be assigned during his recovery from the traumatic event in the hopes of a full recovery. Once it became evident that the insanity would persist a permanent guardian would be found. Either way, a 'guardian' was in place as soon as word came to the king or his representative that a landholder could not care for his or her land, even if that was the local sheriff for a few weeks.¹⁷ When a landholder's condition came on slowly over a period of years, many times the family simply took control a bit at a time as necessary; although, if a family member stepped into this position without royal permission, she could be fined or gaoled and would lose the guardianship.¹⁸ Mentally impaired persons would not enter the records unless

¹⁵ Eustacia de Percy (Heselarton) had been independent. She found herself having difficulties and slowly becoming more than just a little impaired. She asked for a guardian from the king, which he granted. Many years later, though, now older (64) and feeble, she was listed as an 'idiot from birth'. Kew, TNA PRO, C 66/232, membr. 4 and *CPR: Edward III*, ix: 1350–1354, 19. See Chapter 6 below.

¹⁶ Bartholomew de Sakevill, Kew, TNA PRO, C 66/109, membr. 25 and *CPR: Edward I*, III: 1281–1292, 361–362 (11 June 1290). See also, Turner, 'Mental Incapacity and Financing War', pp. 388–92.

¹⁷ Sometimes the sheriff was paid for these measures; at others he was just asked to call a jury to attest to the descent of the lands. When William Berchaud, an *idiota*, died, the sheriff assisted other crown authorities and was paid 5*d.* for his 'aid'. Kew, TNA PRO, C 135/44, membr. 2 and *CIPM*, VII: 1–9 *Edward III*, no. 885, p. 171. The sheriff could act as the go-between for the crown and the chancellor when necessary. The lands of Ralph de Glendon (Clendon) were granted to Ralph's brother for a fee of 3*s.* 4*d.* per year delivered to the sheriff.

¹⁸ Joan Hacche cared for her mentally ill female relative, Philippa Hacche 'without the king's licence' for seven years. Joan was let off because Philippa was not an heir of her father. Kew, TNA PRO, C 54/173, membr. 16; Kew, TNA PRO, C 145/148, no. 6; *CIM*, II: 1307–1349

something drastic happened to get the king's attention — their property was ruined, they inherited more property, or committed a crime. The king as their 'guardian' granted these wardships more often than not to members of their families or close friends of the families.

Royal Officials Asking Questions

Over the course of a mentally incapacitated person's life, he and his relatives might be questioned on numerous occasions as to his competency, the upkeep of his lands, and the welfare of his family. From 1250 until 1272, Henry III favoured sheriffs as the officials that dealt with the mentally incapacitated and their families.¹⁹ Between 1272 and 1307, Edward I gradually moved from using sheriffs to using more commissions, groups of three or more persons who investigated the charges of incompetence.²⁰ Edward II continued to use the occasional commission or sheriff to investigate allegations of mental incapacity among landholders, although he used sheriffs, almost exclusively to investigate crime by the mentally incapacitated or impaired. For lands, he began using the office of the escheator and expanded this office to handle his affairs.²¹ Edward III, and the medieval kings following him, preferred escheators to investigate, since most of the mentally incapacitated of interest to the crown were landholders. Edward did use commissioners upon occasion, such as fol-

(1916), no. 1803, p. 448 and *CCR: Edward III*, vii: 1343–1346 (1904), 42. In another example, 'John de Gisburn of York, "marchant", and John de Coplay of Farnhill took the issues of the premises from the time of John de Staynford's entry [he was an *idiot*a] to the date of the inquisition [...] [they] cut down 100 oaks worth 100s. in the said wood, and for that cause the escheator took the premises into the king's hand'. *CIM*, iv: 1377–1388, 162.

¹⁹ *Close Rolls: Henry III*, vii: 1251–1253 (1927), 120.

²⁰ Sheriffs were called upon to check into lands, much as escheators were. The sheriff investigated Alice Giffard and her daughter Emma, both of whom were *non compos mentis* in 1276. See: Kew, TNA PRO, C 133/16, membr. 2; Kew, TNA PRO, C 133/17, membr. 20; *CIPM*, ii: 1–19 *Edward I*, no. 205, p. 126, and no. 237, p. 141. The sheriff investigated Henry de Holewelle (1290), also an idiot. Kew, TNA PRO, C 133/58, membr. 11 and *CIPM*, ii: 1–19 *Edward I*, no. 795, p. 485. But individuals and groups became accustomed to investigating as well. Thomas de Normanvill, the king's steward, was sent under a writ of *certiorari* in 1279 to look into the lands and mental health of Margery, the heir of John de Anlauby (Anlatheby). *CIPM*, ii: 1–19 *Edward I*, no. 333, p. 198. In 1276 he set a commission to look into the lands of Richard Ardern (*idiot*a and deceased). *CPR: Edward I*, iii: 1281–1292, 519.

²¹ For example: an escheator 'beyond Trent' investigated John de Herst (1311). *CCR: Edward II*, i: 1307–1313, 367.

lowing the Black Death.²² Sheriffs, commissioners, and escheators all played a role, at times to greater or lesser extent, in the determination and administration of the mentally incapacitated and their properties.

After about 1325, except for heirs of titled nobility, the mentally incapacitated rarely appeared before the king himself, as had many during the reigns of Edward I and Edward II. The records indicate that Edward III had mentally incapacitated persons with violent outbursts arrested and heirs with questionable mental capacity brought to the Chancery. For example, in 1376, John Jott became the ward of the king's pavilioner because of his mental condition: 'John is an idiot, as has been found by examination made of his person in the Chancery by John Knyvet, the chancellor, and others of the council'.²³ Edward III relied on the judgement of those trusted officials near him — his chancellor, his council members, and his justices — and out in the countryside, his escheators and his commissioners. Edward sent most mentally incapacitated persons that needed further questioning to his council, as happened to John Warre of Rolleston who was brought 'before the council at London' in the winter of 1350.²⁴ This type of documentation does not indicate that John would be or was questioned by the council, only that he was supposed to have been. Representative of this practice of requiring an appearance 'before the council' and having the actual questioning take place before the chancellor or others is the case of Roger, son of Richard Stanlak. In 1375, Roger had first been questioned by the escheator and then sent on with a separate writ to appear 'before the king and council in the quinzaine of St Martin next to be examined as the manner is; at which day the said Roger was accordingly brought before the chancellor and the king's justices as Westminster and there examined'.²⁵ The crown ordered Roger, as it had John Warre, to appear before the council, but instead the chancellor and

²² John Heton, 1353, Kew, TNA PRO, C 66/240, membr. 19d, and *CPR: Edward III*, ix: 1350–1354, 511. John Pane, 1363, Kew, TNA PRO, C 66/268, membranes 27d, 9, and 4. See also: *CPR: Edward III*, xii: 1361–1364 (1912), 448 (1 November 1363). There are many more like this. Edward seems to have pushed to get the government back on its administrative track after this catastrophic plague.

²³ *CPR: Edward III*, xvi: 1374–1377, 294 and Kew, TNA PRO, C 66/294, membr. 8.

²⁴ Kew, TNA PRO, C 66/230, membr. 26d and *CPR: Edward III*, viii: 1348–1350, 525.

²⁵ Kew, TNA PRO, C 54/211, membr. 5; *CPR: Edward III*, xiii: 1364–1367, 526–27. For more on Stanlake, see also: Kew, TNA PRO, C 66/272, membr. 25d, Kew, TNA PRO, C 135/235, membr. 13, Kew, TNA PRO, C 137/19, membr. 89. He was referred to in a variety of terms, including: *ignorant, mere fatuus et idiota*.

the justices questioned and examined him. Edward III may have moved all such questioning to the Chancery.

Sheriffs

Henry III had used sheriffs to inquire into the lands and mental discretion of those suspected of having mental difficulties as had the monarchs before him. Sometime around 1252, Henry began sending instructions of the sheriffs to prohibit mentally incapacitated persons from estranging their lands. For example, since

Johanna de la Heye is not mentally competent (*non est compos mentis sue*), mandate to the sheriff of Somersetshire that he is not to allow that same Johanna to alienate any of her inheritance, for the reason that her future heirs would be disinherited.²⁶

The sheriff was to monitor her lands and any court transactions involving those lands, preventing her or anyone on her behalf from reducing her holdings. She was not the ward of the sheriff, yet through the office of the sheriff, the crown had become involved in administering the properties of a mentally incapacitated person.

The sheriff also became involved when lands became alienated from the original holding without good reason, or without a sound contract, or when lands became 'wasted', meaning stripped of valuable timber, buildings, or other movables without thought for the next generation. Robert Gregory alienated some of his lands; the sheriff intervened to place the care of the mentally incapacitated Robert (*furiosus*) in the hands of Robert's heir, his grown son, who with his wife took control of Robert's lands and chattels, effectively gaining his inheritance early.²⁷ Removing lands from the possession of the mentally incapacitated in the twelfth and early thirteenth century was not uncommon. The crown often favoured placing the property into the hands of the heir, if he or she were old enough *and* the parent was ageing or seemed to have become permanently incapacitated. If the heir were still under age, the lands would be given in wardship to a member of his family or to his lord.

The sheriff at times was asked to take custody (*custodia*), especially for the short term, of a mentally incapacitated person and his or her lands. Often sheriffs held the lands while awaiting trials to determine rights of inheritance, or a

²⁶ *Close Rolls: Henry III*, VII: 1251–1253, 479.

²⁷ In 1252: *Close Rolls: Henry III*, VII: 1251–1253, 32.

hearing to find a more permanent guardian, or while a mentally incapacitated person was in gaol for a period of time. The king asked the sheriff in Wiltshire to keep Robert de Pateshull until he was in better health. Robert had become 'afflicted with insanity from intemperate air' (*propter intemperiem aeris labore et insania*).²⁸ It was expected that the sheriff would keep Robert and his lands safe from harm or misuse.

Henry used the sheriffs to do some of the investigating into competence. The crown ordered one sheriff to take 'four discreet knights' with him to visit Sarra, the wife of Eustace Karleton, and investigate Sarra's condition and her property. The group found that Sarra was *non compos mentis*.²⁹ As with many court records the outcome of the case is unknown. Sarra's lands, like those of Robert, would have been placed in the hands of someone of discretion, most likely but not necessarily a relative.

After Henry III, the sheriff continued to be employed at times, but acted more as an assistant to other royal officials. During Edward I's reign (1272–1307), sheriffs or the justices of the Eyre looked into several queries concerning the mentally incompetent, such as the lands and person of John de Hispania — one of the last cases that went before the Eyre, which was waning in popularity.³⁰

At Michaelmas in 1279, a case came before the court of the King's Bench in which Richard de Umfraville had come into the wardship of the king, 'as is the custom (*prout moris est*), because he is not in his right mind'.³¹ The sheriff had taken Richard's lands into the king's possession in preparation for wardship, including any lands Richard had sold off over the years. During the reign of Henry III some years prior to 1279, Richard had appeared before the justices at which time he had acknowledged his inheritance and quitclaimed a manor to Gilbert de Umfraville for which his heirs had paid to take possession. William of Swinburn held another. Together they had gone to Nottingham to see the king and request that the manors be returned to them. The king postponed judgment on the matter until it could be investigated further and requested that the

²⁸ *Close Rolls: Henry III*, VII: 1251–1253, 120. The *Close Rolls* translator of this passage put: 'afflicted with insanity by the evil nature of the air', which I think is a bit too dramatic for the term *intemperiem*.

²⁹ *CIM*, I: 1219–1307, no. 2095, p. 562.

³⁰ *CIPM*, II: 1–19 Edward I, no. 591, pp. 349–50; *Select Cases in the Court of King's Bench*, ed. by Sayles, II: *Under Edward II* (1938), no. 49, pp. 120–22.

³¹ *Select Cases in the Court of King's Bench*, ed. by Sayles, I: *Under Edward I*, no. 38, pp. 49–50.

two men return to him later at parliament. The justices spoke to Richard's *amici* who claimed that Richard was *ydeotus* both then and now. Gilbert, nevertheless, defended his right to Richard's lands by saying that firstly, Richard had not been an *idiota* at the time, and secondly, that if he had been the court officials would have realized this:

the aforesaid fine was paid before such wise men, the justices of the bench, who well knew how to weigh up if the same Richard was in his right mind or not. [...] [A]nd Gilbert asks if the country can lie against the record of the justices.³²

Because Gilbert had made the earlier agreement, the court had to accept that everything was done in an orderly fashion, because the earlier statements would not have been accepted 'if either of the parties was under age or an idiot'.³³ Gilbert and William won the right to keep and hold the manors. In the above illustration from 1279, the phrase 'as is the custom' demonstrates how the concept of wardship for the mentally incapacitated was becoming the standard. Further, though the role of the sheriff was important, also notice that the justices played an important part in determining and labelling Richard's condition.

Commissioners

During the reign of Edward II and after the winter of the Black Death in 1348–49 during Edward III's reign, commissions were sent to investigate the mentally incapable. A commission was a group of three or more persons who served only for that commission; they were not a set group that toured counties, but rather a group specifically called together for a particular investigation.

After 1325, it was often an escheator who determined the status of a mentally incapacitated landholder with a few exceptions of special commissions sent by the king. Edward III may have used these commissions to help the escheators with a backlog of cases following the Black Death. During the winter of 1348–49, the legal system all but stopped; for several years after 1349, Edward III sent commissioners to investigate the inheritances of the mentally incapacitated,³⁴ if not the escheators. For example in 1353, the king sent a com-

³² *Select Cases in the Court of King's Bench*, ed. by Sayles, I: *Under Edward I*, no. 38, p. 50.

³³ *Select Cases in the Court of King's Bench*, ed. by Sayles, I: *Under Edward I*, no. 38, p. 50.

³⁴ For example, a commission of three men was sent to inquire as to the mental health of Richard Stanlake of Stutton. *CPR: Edward III*, XIII: 1364–1367, 202.

mission of four men — William Notton, William Fyncheden, John Bollyng, and John Upton — to investigate the condition of John Heton whose ‘lands and goods are occupied and detained by others.’ These men were given the authority to examine John, make inquisitions as necessary, and then they were ‘to certify the king of all the circumstances of the case.’³⁵ In 1355, The king appointed three other men — John Malet, John Shellay, and William Heton, relatives and neighbours — to the wardship of John Heton, his lands, his wife, and his children.³⁶

In the wording typical of assignments to investigate, the king commissioned another special group in 1354, John Moubray and Thomas Ingelby, to examine William Hothom and inquire into charges of mental incapacity, ‘whether he has been an idiot (*idiotia*) from his birth (*a nativitate*) or from some other time, and, if so, from what time, whether he enjoys lucid intervals and what lands he holds.’³⁷ Another formulaic wording of investigations of competence is found in the king’s commission to his clerk, Geoffrey Aston, in 1360 to ‘personally examine Roger de Kyngford who is said to be an idiot and not sufficient for the rule of himself or his lands.’³⁸ Geoffrey needed to determine if Roger had lucid intervals and to appraise the current state of his lands, so that the king or an escheator could make a decision regarding Roger’s status and lands. All of these commissioners, whether as an individual or a group, had the same basic responsibilities of gathering information concerning land, like the work of the escheator. However, none of these commissioners could act with the power of the escheator, who could confiscate lands and appoint guardians without the direct permission of the king.

Escheators

In 1324, Edward II increased the number of escheators from two, one to the north and one to the south of Trent, to a total of nine.³⁹ After this increase, the role of the escheators in investigating competence grew. Among their other investigations, escheators looked into ordinary or initial investigations involving questions of ability to reason among landholders and land distribu-

³⁵ CPR: Edward III, ix: 1350–1354, 511.

³⁶ CPR: Edward III, x: 1354–1358, 201. See also Kew, TNA PRO, C 66/245, membr. 13 (*fatuus et idiota*) and Kew, TNA PRO, C 66/240, membr. 19d.

³⁷ Kew, TNA PRO, C 66/242, membr. 3d, and CPR: Edward III, x: 1354–1358, 70.

³⁸ Kew, TNA PRO, C 66/259, membr. 27d, and CPR: Edward III, xi: 1358–1361, 409.

³⁹ McKisack, *The Fourteenth Century*, p. 77.

tion issues for mentally incapacitated heirs. Edward III, and the several kings that follow in the fourteenth and fifteenth centuries, favoured the escheator for these tasks. The escheator who had doubts concerning competency, called upon the chancellor to secondarily examine individuals.

After about 1330, it was the escheator who regularly responded to writs of *certiorari* from the exchequer concerning the state of an individual and his property when there was cause to believe that he might be *non compos mentis* or in some other way mentally incapacitated. The escheator managed the escheats, those lands without an heir that might potentially revert to the king. Upon the death of a landholder, the escheator would hold an inquisition to find out if the king had any rights in the land. In the case of felons, their heirs lost all rights in the land;⁴⁰ whereas, with the mentally incapacitated, their heirs could continue to inherit upon the death of their mentally incompetent relative but the king had control of the land during the life of that relative.⁴¹

Edward III had begun to use the escheator regularly to investigate not just escheats (feudal tenements) of the king, but all tenements. The escheator would get a writ inquiring after a given person: 'Writ of *certiorari* to the escheator to enquire whether the said heir is an idiot or not &c. to be returned before the barons of the exchequer at York, 16, Nov. 29 Edw. I by p.s. [sic]'.⁴² The escheator would then look into the state of the person and his lands. He would report what he found and who had been present at the investigatory trial.⁴³ When the escheator saw that something was drastically amiss, he had the power to act immediately. He could take persons or lands into immediate royal custody and even name temporary guardians.

One interesting early example of the actions and powers of the escheator were those of the king's seneschal and escheator, Thomas de Normanvill, as he looked into the case of Margery de Anlatheby in 1279 and 1289. Thomas received a writ in 1279 to look into the 'state of Margery the daughter and heir of John de Anlatheby' and find out 'whether she was mentally competent' (*nec mentis sue compos nec*), or if something else was wrong.⁴⁴ The escheator held an

⁴⁰ Lyon, *A Constitutional and Legal History of Medieval England*, p. 190.

⁴¹ Lyon, *A Constitutional and Legal History of Medieval England*, p. 465.

⁴² Reference to the case of Richard Bachesworth: *CIPM*, iv: 29–35 *Edward I*, no. 68, p. 43.

⁴³ For example, the escheator examined William le Venour and found him not mentally impaired. *CIPM*, vii: 1–9 *Edward III*, no. 181, p. 148.

⁴⁴ Kew, TNA PRO, C 133/23, membr. 18; and *CIPM*, ii: 1–19 *Edward I*, no. 333, p. 198. Margery de Anlatheby (or Anlauby).

inquisition into the matter with twelve men from the area. After his investigation, Thomas answered the writ saying that Margery fell ill and is so 'infirm that she is without her senses' ('impotens sue est quod nec mentis sue compos'). And, he added, that while she was ill, 'Robert de Stotevyll of Cotingham [...] came and carried away John, the son and heir of the same Margery'. The escheator had now answered one question, that of the state of Margery, only to start the proceedings on another. Thomas took Margery into custody, initiated action against Robert Stotevyll, and began the process that would gain Margery a guardian, William de Beverly. The escheator returned to inquire into the state of Margery and her lands when William died nine years later:

After the death of William de Beverly the guardian of Margery de Anlatheby who is without intelligence and is an idiot (*est sui inmemor et idiota*) [...] not from her birth (*non est ydiota a nativitate sua*), but she has been so continuously since the death of her husband nine years ago.⁴⁵

The escheator in this case, and in most cases of lands of the mentally incompetent, saw that Margery's rights in the land and her person were cared for in the custody of the chosen royal guardian.

Throughout the fourteenth and fifteenth centuries, the escheators continued to function as inquisitors for the king and his court and also gained expanded discretion in the matters of the mentally incapacitated. The escheators were active in the counties, checking and rechecking on the kings' feudal rights in properties and persons as needed. The institution of the exchequer grew to accommodate the ever more competent bureaucracy of the crown over the course of the early fourteenth century.⁴⁶ In the ninth year of Edward II's reign, an escheator answered a writ of '*plenius certiorari* to enquire whether the said John [Goscelyn of Weston] is an idiot from his birth, or otherwise, and what lands &c. he held'. The return had a list of holdings, their worth, and from whom they were held, along with the note that John 'is an idiot from his birth' (*ydeota existit a nativitate sua*).⁴⁷ The next year the escheator again looked into the case of John Goscelyn, this time on a writ of '*diem clausit extremum*'; John had died. This list of his holdings was corrected a bit from the year before and William, John's brother, named as his heir.⁴⁸ The escheator kept track of the

⁴⁵ Kew, TNA PRO, C 133/54, membr. 12; and CIPM, II: 1–19 Edward I, no. 728, p. 449.

⁴⁶ Keen, *England in the Later Middle Ages*, p. 72.

⁴⁷ Kew, TNA PRO, C 134/52, membr. 5; and Kew, TNA PRO, C 60/114, membr. 1.

⁴⁸ CIPM, v: 1–9 Edward II (1908), no. 620, p. 415.

king's holdings and his interests in wardships and the escheator was the king's contact with the wards, as he was with John Goscelyn and John Maye. In 1308, when the son of Robert Maye, John 'an idiot (*idiota et mentis sue non compos*) from birth', sold off his lands in Ely near Cambridge, the escheator sought out John and the alienated lands upon receiving a writ to that effect.⁴⁹ The escheator increasingly had the responsibility of making decisions, acting without constant supervision, *ex officio* and not just investigating for higher authorities.

The escheators of the fourteenth and fifteenth centuries played the most important role of all the royal officials involved in the cases of the mentally incapacitated. Quite often, they were the first to identify a mentally incapacitated heir and, increasingly, their role expanded to include judging of an individual's condition, taking his or her property into the king's protection, appointing guardians, and reassessing of his or her situation if conditions changed.⁵⁰ In complicated or questionable cases, the escheator also worked to arrest the mentally incapacitated individual, to send the apprehended individual to Westminster, and to confiscate illegally alienated lands. In some cases, the escheator might be the only government official involved with whom mentally incompetent heirs actually met.

The escheators mostly acted as the initial investigators into land disputes and inheritance questions concerning the mentally incapacitated. In 1342, the escheator received a writ 'to examine the said Thomas [son and heir of Griffin Grenestede] personally'. The escheator could not find Thomas, 'yet he took an inquisition concerning the state of the said Thomas, and sends it sewn to the writ'. Five months later, the escheator finally questioned Thomas at home and found he had a 'good, clear and sane memory'.⁵¹ The escheator answered the original writ in a timely manner as best he could in May, and on his course through the area again in October, he stopped to follow up on Thomas 'personally'. The next year in the same county of Sussex, the escheator was again called upon 'personally and by inquisition' to examine another heir with possible mental incapacity: John, son and heir of Thomas Lyndhirst. Once more the person under investigation could not be found, but this time, the bailiff and the parson of the church 'had removed him and taken him outside the bailiwick'.⁵²

⁴⁹ *CIPM*, v: 1–9 *Edward II*, no. 163, p. 87.

⁵⁰ For an example, see *CIM*, IV: 1377–1388, no. 284, p. 162 and the inquisition into the status and lands of John de Staynford.

⁵¹ This translation: *CIPM*, VIII: 10–20 *Edward III*, no. 340, p. 236.

⁵² Kew, TNA PRO, C 135/67, membr. 12.1–3; *CIPM*, VIII: 10–20 *Edward III*, no. 404, p. 277.

The escheator noted that John ‘has been an idiot from his birth, and still is’, relying on the testimony of the bailiff and the parson. In this case, the escheator could not personally interview the mentally incapacitated person and, instead, trusted the testimony of reliable persons who had lately seen the man in question, at least until his next visit to the area.

For most of the fourteenth and fifteenth centuries, the escheators dealt with all of the minor cases of mental incapacity and many of the investigations for difficult cases or those involving the magnate’s heirs. The king, his council, his chancellor, or a commission often mediated the final judgement in special cases or those involving the heirs of the magnates. For example, ‘Whereas it is found both by an inquisition taken by the escheator and by the examination of Peter, son and heir of John Chaumpeneys, before the king’s council that Peter is *not* an idiot.’⁵³ Peter had been ‘charged’ because he was believed to be a *fatuus*; the king had taken Peter’s lands into royal custody until the charge had been answered. The sheriff most often held lands in temporary custody in such cases as that of Peter. Once the escheator found Peter was not mentally incapacitated, his lands ‘together with everything received thence since they were taken into the king’s hands’ were returned to Peter.⁵⁴ The escheator investigated Peter, questioning him and probably his relatives and neighbours. The escheator sent a report to London and likely asked, wanting to be certain, to have Peter sent to Westminster where the king’s council also questioned him. Both of these inquisitions found Peter capable and so his lands were returned to him, and it was probably the sheriff who was ordered to return the lands to Peter.

* * *

Someone who might be mentally impaired or forgetful but competent enough to govern himself and his property adequately would be allowed to do so. Once the king, the escheator, or other designated court official determined that an individual heir was indeed mentally disabled to the point of no longer being capable of managing his affairs, that person became a royal ward. Of course, the level of responsibility was considered. If a person held a messuage, he would not need the same level of competence as someone who held a knight’s fee. A mentally incompetent person with feudal responsibilities would be in wardship

⁵³ CCR: *Edward I*, v: 1302–1307 (1908), 299; my italics. See also: Kew, TNA PRO, C 54/122, membr. 3.

⁵⁴ Peter was called *sot & fol nascie* in Kew, TNA PRO, C 133/120, membr. 4.1, the rest of that piece is in Latin: ‘idiota sue & non compos mentis sue’, etc.

to the king, who most likely would grant that individual's holdings to several others to govern. Often the king would give the wardship to someone in that person's family who could not inherit, and in theory would then not be a threat to the vulnerable ward. If there were no family members to whom such properties could be safely committed, the king might grant a ward's lands to a friend of the family of equal or higher status, so that, in theory, at least the property would be of little temptation to the guardian. When the individual had no family left at all, especially in cases of individuals born mentally incompetent, the king would grant valuable property to one of his officials as payment for services. Barring serfs, since their 'inherited' land did not belong to them, all the mentally incapacitated with some type of inheritance were supposed to be in the king's custody. The conditions by which they came to be in the king's custody varied depending on how and when they became mentally incapacitated, whether or not that condition was continuous, and if the king or his officials knew of this person's existence.

CRIMINALS

Pardon [...] William Pilche of Sonky, a ‘mad fool (*fatuus*)’, for the death of Augustine le Fevere of Maunnecester. [...] William was passing along the high road by night when he was met by the said Augustine in the disguise of a terrible monster uttering groans and refusing to speak though adjured in God’s name, on account of which the said William rushed upon him as a monster and killed him.¹

Most people in medieval English society viewed mentally incapacitated persons through a biblical lens. They heard conflicting biblical stories about innocent people afflicted with torments and of sinners tortured for their crimes against God and His servants.² This dualistic concept — of mentally incapacitated individuals being either sinners or innocents — framed the picture medieval persons held when conceptualizing mental affliction. In line with this conceptual framework, a mentally incompetent criminal was most often given the benefit of doubt because in either case — sinner or innocent — he was unable to think rationally, normally about his actions. And, the concept continued, if he was a sinner, God was already punishing him with madness. This chapter looks at the mentally incapacitated and the temporarily insane in medieval England who committed crimes and at the types of crimes they committed; further, this chapter discusses the treatment of these persons by courts and in the law.

¹ Kew, TNA PRO, C 66/83, membr. 22; and *CPR: Henry III*, v: 1258–1266, 407. The translator for the calendar translated *fatuus* as ‘idiot’.

² See Chapter 1 above for a fuller discussion of biblical references.

Crime by mentally ill or incompetent persons was deemed accidental, a 'misadventure', pardonable, and certainly not malicious within English legal practice. That is not to say that these crimes were not thoroughly investigated. On the contrary, officials investigated all crime, both violent and non-violent, and mental incompetents committing crimes appear in investigation queries and reports, though not as frequently as sane perpetrators. It was also not *pro forma* to dismiss cases in which the guilty party was temporarily or historically mentally incapacitated, even when an entire community agreed that a person had been mentally incapacitated at the time of the crime. The escheator or other court representative closely questioned all involved parties, found the guilty party, and, if that party was mentally afflicted at the time of the crime, dismissed the punishment.

There were three categories of crime that involved mentally incapacitated persons in medieval English law. First, felonies, which generally included 'homicide, arson, rape, robbery, burglary, and larceny.'³ Only homicide, arson, and larceny pertained to the mentally impaired. Robbery and burglary involved cognitive, and frequently premeditated, actions, which were inconsistent with mental affliction. Second, trespasses — later called either misdemeanours or torts (wrongs) depending on the circumstances — which might include personal violence, seizure of property, or fraud. Fraud was not likely in cases when the defendant was mentally afflicted, again because the very concept of fraud requires mental processes beyond those of the mentally impaired or ill.⁴ Third, civil violations, such as breaking or illegally making contracts and evading the law, which the mentally incapacitated might perpetrate, but, in the eyes of the crown, only accidentally.⁵ The mentally incapacitated were kept from making poor decisions concerning land or their persons: they could not enter into any kind of contract while incapacitated; therefore, they could not sell land, get married, or make a will. If they had times at which they were sane and broke the law as a sane person, they could not use their times of mental incapacity as an excuse to evade prosecution.

Almost exclusively, violent crime was caused by the temporarily insane, for example if someone was ill and while with fever murdered a child or spouse. Violent individuals, especially the mentally and physically uncontrollable, were restrained to keep them from doing harm to themselves or others. The purpose

³ Lyon, *A Constitutional and Legal History of Medieval England*, p. 465.

⁴ Lyon, *A Constitutional and Legal History of Medieval England*, pp. 466, 632.

⁵ Lyon, *A Constitutional and Legal History of Medieval England*, pp. 633–36.

behind the actions of the administration was not to incarcerate every mentally incompetent person, but to keep the person and his family and neighbours from harm. In each instance of crime, the officers investigating the case sought the intention of the person guilty of the crime. To that end, they often recorded the details of the conditions of the mentally incapacitated involved in crime in order to provide the proper documentation that would lead to an appropriate punishment or perhaps a dismissal of a charge.

Early Legal Thought and Practice

In Angevin England, most mentally incapacitated individuals would have been left nominally to themselves, though some communities protected the mentally afflicted from danger. Mentally incapacitated persons could be a danger to themselves or to others, and might need assistance to guide them out of harm's way. Many communities considered it necessary to protect the mentally afflicted with goods or property from greedy relatives or thieves who might try to take advantage of a simple-minded person. Henry I (1100–35) contemplated ways to curb abuses of custody and to protect the mentally incompetent by mandating compassion. In the *Leges Henrici Primi*, Henry warned against allowing relatives to act as guardians who would gain from the untimely death of a mentally incapacitated relation for fear that the ward and his estate would be in danger.⁶ *Leges Henrici Primi* also stated, more specifically with regard to the mentally incompetent, that 'their relatives should compassionately care for insane persons (*insanos*) and doers of bad deeds (*eiusmodi maleficos*)',⁷ most families seem to have cared for relatives with property, especially children. It is hard to say what happened to those without property for they rarely appear in the records, unless they committed crimes.

⁶ 'No one shall be entrusted to the care of a person who is claiming his inheritance, whether it is a relative of his or a stranger (a dangerous guardianship indeed)'; *Leges Henrici Primi*, ed. and trans. by Downer, chap. 70. 19, pp. 224–25. This private legal treatise is dated sometime between 1108 and 1118. Downer suggests that the *Leges Henrici Primi* was an attempt to collect together all law in England and that the author had to hand a Latin version of the Anglo-Saxon laws, among others. Yet, the author (or authors) did not include all of Henry's laws and, while he attempted to collect together all known law, his collection was probably never used for any serious legal purpose. See 'Introduction', in *Leges Henrici Primi*, ed. and trans. by Downer, pp. 1–78, esp. pp. 5–6, 34–36.

⁷ *Leges Henrici Primi*, ed. and trans. by Downer, chap. 78. 7, pp. 244–45. See also chap. 84. 4, pp. 260–61: 'He who answers a fool according to his folly is like unto him'.

Under Henry I and the Angevin kings, medieval English customary laws associated with the mentally ill, feeble-minded, or deranged associated with criminal activity followed from the idea of intent: if not in his right mind, a person could not be held accountable for his actions. Intent was fundamental to the laws of England; accidents went unpunished or had a far lesser punishment than if intent to harm were there.⁸ Medieval English law insisted that the innocent could not and should not be punished. The law considered the mentally incompetent unaware to the point of being incapable of malice and, therefore, incapable of felony. Even as an adult, a feeble-minded person might commit a felony but he did not have to forfeit life, limb, or property.⁹ The cases of those with some awareness or periods of lucidity came under scrutiny as to whether or not the person knowingly committed the crime. The crown pardoned most mentally incompetent and mentally ill persons for their crimes, even if their incompetence or illness was temporary.

Extant records indicate that medieval English society generally regarded the mentally impaired and incompetent as behaviourally passive; nevertheless, mentally afflicted persons who lacked physical control could cause the deaths of others given the severity of their mental conditions.¹⁰ A mentally incompetent individual could have a violent episode and lash out at another person or himself. In rare instances, such an individual committed other types of crimes impulsively or accidentally, such as arson or trespass. Sane persons could also exhibit mental incapacity becoming temporarily deranged during an illness, such as with a high fever. In the brief time that these persons were ill, they could cause death or harm to others while their conditions altered their awareness, reality, and control.

In early thirteenth century, *Bracton* says that the mentally incapacitated could not be held liable for their actions, as does the *Corpus juris civilis* previously. In cases of crime, *Bracton* also submits that a mentally incapacitated person *could* be held liable for his or her actions, if 'he acts under pretence of madness while enjoying lucid intervals'.¹¹ *Bracton* here agrees that the mentally

⁸ Bracton, *De legibus et consuetudinibus Angliæ*, fols 149^v–150^r, lib. III, caps 30–31 (Bracton, *De legibus et consuetudinibus angliae*, ed. by Woodbine, II, 365–66). See also: Butler, *The Language of Abuse*, pp. 114–16.

⁹ Lyon, *A Constitutional and Legal History of Medieval England*, p. 465.

¹⁰ Turner, "Afflicted with Insanity", pp. 232–35. Butler, *The Language of Abuse*, p. 114.

¹¹ Bracton, *De legibus et consuetudinibus Angliæ*, fols 149^v–150^r, lib. III, caps 30–31 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 423–24). Compare with

incapacitated should not be held accountable for their actions, unless guilty of a crime during a time in which the person was lucid.

To this concept of unwitting action on the part of the mentally incapacitated, the author of *Bracton* adds broadened descriptions of the *furiosus* and *non sane mentis*¹² writing, ‘such men are not far removed from brute beasts which lack reason’.¹³ Elsewhere, the *Bracton* author writes that if mentally incapacitated persons — whether deranged (*mente captus*), delirious (*freneticus*), or mentally retarded (*infantulus*) — should commit suicide, it is not a felony because

they are without sense and reason and can no more commit an *injuria* or a felony than a brute animal, since they are not far removed from brutes, as is evident in the case of a minor, for if he should kill another while under age he would not suffer judgement.¹⁴

The author of *Bracton* draws the conclusion that just as animals or young children lacked the knowledge and understanding to make sound judgements, so too should the mentally incapacitated be judged in their lack of understanding even though outwardly they might be adults.¹⁵

Violent Crime in the Later Middle Ages

The behaviour and subsequent treatment of mentally ill and violent criminals were quite different from those of mentally incapacitated persons committing non-violent crimes. When a person became a danger to his community or to himself, he needed to be watched carefully and at times restrained or

Code, 5. 70. 6 and *Digest*, I. 10. 6, ‘for many feign madness or mental illness so as to escape their legal obligations by receiving a curator’.

¹² Bracton, *De legibus et consuetudinibus Angliae*, fols 420^v–421^v, lib. v, cap. 20 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, iv, 308–09).

¹³ Bracton, *De legibus et consuetudinibus Angliae*, fols 420^v–421^v, lib. v, cap. 20 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, iv, 308–09). For more on the concept of the ‘monstrous’ and conceptions of what it meant to be ‘human’ in the Middle Ages, see: Friedman, *The Monstrous Races in Medieval Art and Thought*.

¹⁴ The passage continues: ‘That a madman (*furiosus*) is not liable is true, unless he acts under pretense of madness (*furore*) while enjoying lucid intervals’. Bracton, *De legibus et consuetudinibus Angliae*, fol. 150^r, lib. III, cap. 31 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 424).

¹⁵ Bracton, *De legibus et consuetudinibus Angliae*, fol. 336^r, lib. v, cap. 2 and fols 420^v–421^v, lib. v, cap. 20 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, iv, 69 and 308–09).

locked up. Mentally impaired persons engaged in felonies of suicide, homicide, larceny, and arson. Trespass onto property and other misdemeanour crimes against individuals or property, such as fisticuffs fighting, were also punishable. These punishments were normally dismissed when the individual was mentally incapacitated because he was understood to be unable to discern his actions as wrong. As Bryce Lyon explains, 'Very young children, for example, could not be held guilty of felony and individuals of unsound mind or those who killed by misadventure or in self-defence were pardoned'.¹⁶

Those mentally incapacitated committing crimes, both felonies and trespasses, fell into two groups: those with ongoing conditions and those with temporary losses of mental function. On the one hand, few mentally incompetent persons committed violent crimes willingly, unwittingly or accidentally. On the other hand, normal persons under the mental duress of illnesses committed violent crimes while mentally deranged regularly it seems. These ill persons — with fever, hallucinations, ravings, or general unrest — sometimes injured or killed another person or themselves. A few non-ill individuals claimed to be under great strain (for example, the death of a spouse)¹⁷ or experienced an unexpected event that triggered a mental outburst or breakdown (for example, a fright),¹⁸ leading them to overreact and kill. Upon occasion the court was sympathetic to this type of defence and would offer a pardon to a contrite individual.

Homicide was the most commonly prosecuted crime involving the mentally incapacitated; mental incapacity in these cases included persons with mental difficulties and individuals with temporary mental incapacity, as during an illness. The crown pardoned many of these persons because they could not be held accountable for their actions since they could not reason at the time of those actions.¹⁹ The exceptions were those mentally incapacitated for whom it could be proved that they were lucid at the time of the crime (rare).²⁰ Normally,

¹⁶ Lyon, *A Constitutional and Legal History of Medieval England*, p. 465.

¹⁷ Emma had a recurring madness every year on the anniversary of her husband's death. Kew, TNA PRO, JUST 1/467, membr. 7.

¹⁸ William Pilche of Sonky, quoted at the top of the chapter, was a mentally disabled person, who met a man in a disguise on the road at night and did not understand the 'game'. He killed the 'monster'. More on this case later in this chapter, see: Kew, TNA PRO, C 66/83, membr. 22; and *CPR: Henry III*, v: 1258–1266, 407.

¹⁹ *CCR: Edward III*, VIII: 1346–1349 (1905), 165 (30 October 1370); Bracton, *De legibus et consuetudinibus Anglie*, fol. 150^r, lib. III, cap. 31 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 424); and *The Mirror of Justices*, ed. by Whittaker, p. 138.

²⁰ For example, a thief unsuccessfully pleaded insanity as his defence. Kew, TNA PRO,

the coroner or other royal official would treat crime by those unable to think rationally as an accident, a trespass or tort. Pardon for the mentally incapacitated was common, even for the more serious felonies of mayhem and murder, which medieval English law normally punished by loss of limb or life.²¹ The law took into account the mental status of the individual since the law weighed intent, and the person who could not intend to harm would not be punished as if he did. Just as with murder, other violent actions, even minor trespasses, could only be punished as such if and when a person consciously acted. Persons with mental illnesses or lacking mental abilities could not be held to the same level of intent under English law.

Suicide: Murder of the Self

Suicide or homicide of the self was pardonable when the self-murderer was mentally incapacitated;²² if not pardoned, the person's property was forfeit to the crown, leaving his heirs with nothing. The church and English civil law both considered murder of the self, or suicide, a crime of murder. On the one hand, if a person considered by medieval society to be sane were to commit suicide, he (now dead) would have been treated as a criminal by both the state and the church. He could neither be buried in consecrated ground nor 'keep' his property, which would be forfeit to the crown. In other words, the heirs would be disinherited. On the other hand, if a person deemed mentally incapacitated committed suicide, it would be judged an accident. The person could still be buried as an innocent in consecrated ground, and his heirs would retain their inheritance. It was, therefore, important to the lines of inheritance and to a family to prove mental incapacity in cases of suicide. For example: Edmund Mordaunt killed his wife, Ellen, and proceeded to commit suicide by drowning himself in a local pond.²³ Edmund's family would have been affected by both these rules were it not for the coroner's determination of mental incapacity. Because of Edmund's 'insanity' (*demencia*) his son Robert inherited.

JUST 3/88, membr. 13.

²¹ Butler, *The Language of Abuse*, pp. 114–16; Lyon, *A Constitutional and Legal History of Medieval England*, p. 295.

²² Butler, *The Language of Abuse*, pp. 116, 205. See also: Butler, 'Women, Suicide, and the Jury'.

²³ Kew, TNA PRO, C 258/17, no. 26 and Kew, TNA PRO, C 258/20, no. 31. See also: Murray, *Suicide in the Middle Ages*, I, 170–71.

This legal restriction made the state of the mental condition of a person who committed suicide important to the heir and his family. Families worked to establish a motive for the suicide based on mental pressure that might have led to a mental breakdown if there was not evidence of long-term mental incapacity. Records describe Alice the wife of Henry Warewyk's condition in just such terms, possibly to make certain that the combined inheritance from Alice and Henry was not lost to the crown. She was described as having been ill for the past six months, being *non compos mentis*, and in a 'wild state [...] threw herself into the Thames and drowned'.²⁴ Whether or not mentally ill, this woman had been sick, and the officials were clearly calling for a dismissal of self-murder and a pardon from the crown both so that she could be buried in consecrated ground and her heirs could receive the inheritance.

Suicide, in every case, was deemed accidental in the case of mental incompetence. As pointed out in *Bracton*: 'just as a man may commit felony by slaying another so may he do so by slaying himself',²⁵ which is quite different from the case of someone who is mentally incapacitated. Even if only incapacitated during illness, 'labouring under a high fever', the mentally ill did not commit a felony, 'nor do such persons forfeit their inheritance or their chattels'.²⁶ *Bracton* concludes that this was because they had no sense of right or wrong and could not be held accountable as if they had 'sense and reason'.²⁷ For example, when Richard Upton, a *freneticus*, 'stabbed himself in the stomach' with his own knife and died three days later of the wound; court officials determined that it was accidental because Richard could not understand right from wrong.²⁸

In the case of a self-murder, mentioned above, Edmund Mordaunt had enough property that his suicide was of concern both to the king and to

²⁴ *Calendar of Coroners Rolls*, ed. by Sharpe, p. 249.

²⁵ 'Bracton' is covered more fully later in this chapter. Bracton, *De legibus et consuetudinibus Angliae*, fol. 149^v, lib. III, cap. 30 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 423).

²⁶ Bracton, *De legibus et consuetudinibus Angliae*, fol. 149^v, lib. III, cap. 30 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 423–24). 'It ought to be otherwise if he kills himself through madness or unwillingness to endure suffering, or dies by misadventure. The inheritance will descend to his heirs, because he who is guilty of the crime having died, punishment is extinguished'. Bracton, *De legibus et consuetudinibus Angliae*, fol. 130^{r-v}, lib. III, cap. 13 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 366).

²⁷ Bracton, *De legibus et consuetudinibus Angliae*, fol. 149^v, lib. III, cap. 30 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 424).

²⁸ *The Roll of the Shropshire Eyre of 1256*, ed. by Harding, no. 798, p. 276.

Edmund's heirs. A mentally incapacitated person without land who committed suicide did not present as great a dilemma for the royal courts because the crown had no claim on movable goods. Such a person would not have been the responsibility of the crown; therefore, the suicide of such a person only entered the records as an investigation of foul play or if a question arose about his goods. Isabella, the wife of Robert Pampesworth, for example, hung herself 'by a cord from a small beam in the said solar, when nobody was present, whilst suffering from the aforesaid disease'.²⁹ Isabella had 'suffered' from 'a disease called "frenzy"' for the last two years. Isabella was obviously watched closely for just such behaviour, because someone returned to cut her down, and she was alive 'about a quarter of an hour' before she died 'from weakness of the disease and the hanging'.³⁰ Married and with only chattel, the sheriff took stock of the situation, but the crown had no more direct interest in the case.

The crown or city would claim the property of sane suicide victims, even movable property,³¹ and give it to the church as alms; whereas, the goods of a mentally incapacitated suicide were given to his nearest relative as an inheritance. In a good example of how this worked, the mentally incompetent Joan had no relations that could be found after her suicide. Joan had thrown herself into the Thames 'in her madness' and drowned. Evidently excused from blame because of her condition, she would not have had to forfeit her property had she lived, and since she had died her property was to go to her heir. Yet, none could be found. The crown decided that her meagre possessions 'should be given in alms', not for the poor, but instead, 'for the soul of the same Joan'.³² The king, mayor, or burgess could not keep her property and, therefore, her three shillings worth of chattels were given to the church to pray for her soul.

Homicide

The mentally incapacitated individual who committed homicide nearly always murdered someone he knew: a relative, a neighbour, or a colleague. Occasionally he might lash out at a stranger, but this was rare. Even in those

²⁹ *Calendar of Coroners Rolls*, ed. by Sharpe, pp. 36–37.

³⁰ *Calendar of Coroners Rolls*, ed. by Sharpe, pp. 36–37.

³¹ As was the case with Hugo Kynardeslepe who drowned himself in 1292 — his was not regarded as suicide because he was *mente captas [...] fatuus*; Kew, TNA PRO, JUST 1/303, membr. 67.

³² *Year Books of Edward II*, ed. by Maitland and others, xxvi.1 (1968), 93.

instances when the association as a member of the community is difficult to tease from the records, unless he had travelled a great distance, he had most likely previously met the person he murdered. Furthermore, those persons that were closest to him stood the greatest chance of being in the wrong place at the right time. Sometimes, the mentally incapacitated acted without warning and with extreme violence. At other times, mental illness came on in conjunction with another illness or health issue leaving the individual unable to discern. Men and women in extreme pain or fever could lash out at others in their proximity not realizing what they were doing and injure or kill those around them. It was not unusual for parents to kill children while deranged with a fever.

Men with mental afflictions committed homicide more than women; this may seem obvious, but it stands to reason that they were probably more difficult to restrain. Many persons whom mentally incapacitated men killed were in their family. For example, William Belle 'being mad in his madness' killed his family member John [Belle] Geppe of Axay.³³ Thomas Potter also killed his relative Robert Potter 'while mad in his madness'.³⁴ John Faytour killed his father during a time of 'lunations' when he became *demencia et furore*.³⁵ It can be only a guess as to why these men unwittingly murdered other men in their families; perhaps their relatives were attempting to help them, or these relatives might have just been in the vicinity when the mentally incapacitated men began to rage.

Those individuals with mental affliction at the time they killed close family members were likely pardoned for the homicide. Most husbands with ongoing mental conditions had lucid moments; otherwise, they would not have been married.³⁶ Married men suffering from a lack of discernment in conjunction with a mental affliction might unwittingly lash out at their wives or children. For example, Ralph Silkstone killed his wife Juliana 'with a knife and it is said that he was mad (*quod ipse furiens fuit*) and he has fled. He has no chattels. No one else is suspected'.³⁷ In 1282, Richard Russel 'acted from insanity' (*insania*)

³³ Kew, TNA PRO, C 54/208, membr. 4; and CCR: *Edward III*, XIII: 1369–1374 (1912), 165.

³⁴ Kew, TNA PRO, JUST 1/422, membr. 4.

³⁵ Kew, TNA PRO, JUST 3/158, membr. 11d. My many thanks to Henry Summerson for pointing out this record as well as several others from JUST in this chapter. I am sincerely grateful for his support and interest in this topic.

³⁶ McSheffrey, *Marriage, Sex, and Civic Culture*, pp. 17–47 and *Fleta*, ed. and trans. by Richardson and Sayles, bk 1, cap. 11, ¶ 8 (1, 21).

³⁷ *Rolls of the Justice in Eyre [...] for Yorkshire*, ed. by Stenton, no. 526, p. 211.

and, unable to distinguish between 'good and evil', murdered his wife, Isota.³⁸ Richard del Boche, also described as unable to tell good from evil, could not mentally comprehend his actions (*non fuit compos mentis sue*) when he murdered his wife Almarica.³⁹ John Bauchon killed his wife, Alice, 'while insane',⁴⁰ as did Philip Stageman, who killed his wife Agnes.⁴¹ Richard Sharp struck his wife on the head with an axe; he had been *non compos mentis* for the preceding two months.⁴² John Capella killed his wife, Matilda, in Chichester Cathedral, where he remained with his hands and feet bound.⁴³ These men could have been afflicted with some type of illness or extreme pain, but the implication in the records was that they had been mentally impaired for some period of time before killing their wives.

Other men killing their wives clearly did so during a time of temporary insanity brought on by illness. Gilla (Guillaume?) Blackburn, as an example, murdered his wife Amoria 'while ill with that of madness [...] raving' (*in infirmitas illa amens [...] furiosus*).⁴⁴ Gilla's mental condition was brought on by his illness, which led to his loss of control and the subsequent death of his wife.

Homicide by fathers against their children also occurred while they were temporarily insane or ill. Jordan de Wrydewelle is one example of a father suffering from a mental condition that affected his ability to discern the situation. He murdered his daughter, Margery, while 'insane [...] at a time when he was mad' ('furore [...] quod tunc temporis fuit amens').⁴⁵ In other examples, Hugh Mysin hanged his daughter, Cecily, 'and tried to hang himself while in a frenzy and not feloniously'.⁴⁶ Thomas le Hest was detained in gaol for the murder of Stephen his son, but proved innocent of the homicide because he

³⁸ Kew, TNA PRO, C 260/2, membr. 30 (formerly Kew, TNA PRO, C 47/55/6/204).

³⁹ Kew, TNA PRO, C 260/11, membr. 27 (formerly Kew, TNA PRO, C 47/65/3/89).

⁴⁰ Kew, TNA PRO, C 260/51, membr. 15 (formerly Kew, TNA PRO, C 47/79/10/330).

⁴¹ Kew, TNA PRO, C 260/25, membr. 2.

⁴² Kew, TNA PRO, JUST 3/74, membr. 3.

⁴³ He was described as *furiositate*; there is more on him in the later discussion in this chapter on punishments. Kew, TNA PRO, JUST 1/924, membr. 73d and Kew, TNA PRO, KB 27/45, membr. 18d.

⁴⁴ Kew, TNA PRO, JUST 1/422, membr. 1d.

⁴⁵ Kew, TNA PRO, C 260/2, no. 25 and *CCR: Edward I*, II: 1279–1288 (1902), 151 (10 April 1282).

⁴⁶ *CIM*, I: 1219–1307, no. 2220, p. 595.

was ill (*infirmitate*) and at the time in frenzy (*in frenesiam*) when he murdered his son.⁴⁷ Thomas murdered his son while mentally incapacitated in conjunction with an illness; Jordan and Hugh possibly had ongoing mental conditions that seem to have flared into uncontrolled behaviour leading to the unfortunate deaths of their children.

Occasionally, a mentally incapacitated person spiralled out of control killing those close to him, then turned his rage inward onto himself. Hugh Misyn, above, attempted suicide after killing his daughter; similarly, Edmund Mordaunt,⁴⁸ also discussed above, killed his wife and successfully killed himself. It cannot be known if these were suicides out of guilt for the death of each person's relative or part of a mental break in which the individual lashed out at everything. In another example, Henry Darton, 'frenzierd and unfortunate' (*frenesim et infor[tuna]tus*) was detained for the murder of Lottis Lych, possibly a neighbour. He became mad and fell (into a well or body of water) and drowned.⁴⁹ Henry's madness almost sounds as if it was a result of learning of the death of Lottis, and he mindlessly fell and drowned. One is left to wonder why Henry was not under closer supervision.

More poignant were instances when a husband killed several members of his family, sometimes multiple children or his wife and children. For example, Richard Cheddestan was imprisoned at Norwich for the deaths of his wife and two children, whom he murdered 'in a frenzy', a condition he suffered from regularly.⁵⁰ John Beneit of Wodenese killed his wife, Alice, and two daughters, Mariota and Alice, 'in a fit of madness (*per frenesimus morba acute labortas*), while labouring under acute disease'.⁵¹ Another John, John Argent, killed his two boys, John and Roger. John the father was in a 'frenzy of madness'.⁵² These men were all pardoned for their crimes. John Beneit was released, as was John Argent, while Richard was held since the commissioners were no longer positive he could be trusted to be out in the community.⁵³

⁴⁷ Kew, TNA PRO, C 260/4, no. 13b.

⁴⁸ Kew, TNA PRO, C 258/27, no. 26; Kew, TNA PRO, C 258/20, no. 31.

⁴⁹ Kew, TNA PRO, JUST 1/806, membr. 22d.

⁵⁰ *CIM*, I: 1219–1307, no. 2202, pp. 589–90.

⁵¹ Kew, TNA PRO, C 66/109, membr. 6. See also: *CPR: Edward I*, III: 1281–1292, 390.

⁵² Kew, TNA PRO, C 66/209, membr. 31; Kew, TNA PRO, C 260/53, no. 59b; and *CPR: Edward III*, VI: 1343–1345 (1902), 15.

⁵³ More on these men below in the discussion on punishments and pardons.

While no extant records have surfaced in this study of mentally incapacitated wives killing their husbands, it probably occurred but more rarely.⁵⁴ There are records of women killing their children, again sometimes in association with an illness and sometimes with some type of pre-existing condition; and, particular to mothers, shortly after childbirth. Modern scholars can only speculate what this might mean given current knowledge of post-partum depressive conditions. There are a couple of examples of women killing during post-partum. Agnes Wyrseye became 'mad' after childbirth and killed her daughter.⁵⁵ Whereas, Ida Crekton killed her child 'in childbirth'; this seems an odd statement to make, but she is also described as *insaniam*. Either she did not know what she was doing and killed the child accidentally, or childbirth brought out an extreme emotional reaction to pain or something else, which a mentally ill person might not understand, and she lashed out at the child.

Mothers also murdered their children well after childbirth, while suffering episodes of madness or while ill with temporary insanity, just as with fathers. The records describe some of these women specifically as having temporary insanity, as in the case of Goda Arcebek who killed her two children 'during a time when she was mad (*furiosa*) during the day of the moon (*die lune*)'.⁵⁶ The moon was not often blamed, but there are enough records that mention it to know that it was considered a driving motivator in conditions of madness. Alicia Maynard was also temporarily insane. She murdered her son, Brom, while temporarily *amencia*; she continued to be 'without sense' (*sine sensu*), without discernment, at the time of the trial and was to be kept in gaol until she was well.⁵⁷

Some women were ill at the time they murdered their children. When known, records clearly defined an illness or symptom; fever was one such symptom. Other records had something more vague: Matilda Carson was described as 'labouring with frenzy' (*laborans frenesy*) when she killed her two sons.⁵⁸ Maud, the wife of Henry, killed her two sons 'through madness and not through felony or through malice' ('pro furiam et non pro feoniam aut pro malaciam').⁵⁹ More clear is a case in 1284, when Maud, the wife of Walter Levying, was ill (*infirmi-*

⁵⁴ Butler, *The Language of Abuse*, pp. 114–16.

⁵⁵ Kew, TNA PRO, JUST 1/159, membr. 3d.

⁵⁶ Kew, TNA PRO, JUST 3/125, membr. 10.

⁵⁷ Kew, TNA PRO, JUST 1/818, membr. 48d (1240).

⁵⁸ Kew, TNA PRO, JUST 1/909A, membr. 27 (1245).

⁵⁹ Kew, TNA PRO, C 66/70, membr. 5; CPR: Henry III, iv: 1247–1258 (1908), 491.

tate) to the point that she could not tell 'good from evil'; she became mentally incapacitated and frantic (*furiositate et frenesi ducta*), killing their two children, John and Alice.⁶⁰ Regularly records stated that the mother had murdered 'while mad', meaning that she was not normally in such a state. Three brief examples of a similar form provide good illustrations of such entries: 'Homicide of John son of Stephen Brumman by Amy his mother while mad';⁶¹ 'Homicide of Rose, daughter of Robert de Burley, at Hathersage by her mother while insane';⁶² and 'Homicide of Agnes and Maud, daughters of William Talbot, by Margaret his wife while insane'.⁶³ All three of these women, Amy Brumman, Agnes Burley, and Margaret Talbot, seem to at least have had times of sane behaviour. For one thing, they were all married; for another, the 'while' in each statement implies that at other times, they would not have committed homicide.

Child victims of homicides by mentally ill or incapacitated individuals did not always die at the hands of their parents. Emma Hereward, for instance, killed Maud, the daughter of Emma's neighbour, Emma Wolurich, 'a child of three years, whom she killed through madness' (*demenciam*).⁶⁴ Like Emma, Drew de Henle was pardoned for the murder of his neighbour's children.⁶⁵ Three justices delivered Drew to gaol for the murder of two boys whom 'he killed through [...] madness and not through felony' ('Drogo de Henle [...] furiam et non pro feloniam').⁶⁶ Geoffrey de Riche was known to be afflicted with madness (*furor*); and while in *demencia*, Geoffrey 'cut short the life' of Agnes the daughter of Thomas Fuller.⁶⁷ These, probably neighbour, children also did not have enough sense to stay out of the reach of mentally incapacitated persons who could not control their actions.

The mentally incapacitated did not always kill the weak or those in their families. They might lash out and kill a neighbour or colleague, and most of

⁶⁰ Kew, TNA PRO, C 260/3, no. 19; *CPR: Edward III*, II: 1330–1334 (1893), 146.

⁶¹ Kew, TNA PRO, C 260/2, no. 41.

⁶² Kew, TNA PRO, C 260/16, no. 24.

⁶³ Kew, TNA PRO, C 260/20, no. 9.

⁶⁴ Kew, TNA PRO, C 66/62, membr. 6; *CPR: Henry III*, IV: 1247–1258, 100.

⁶⁵ More on their pardons later in this chapter.

⁶⁶ Kew, TNA PRO, C 66/70, membr. 13; *CPR: Henry III*, IV: 1247–1258, 471.

⁶⁷ The record reads: Thomas Fullonis. Kew, TNA PRO, JUST 1/1109, membr. 18 (1257). See: Hurnard, *The King's Pardon for Homicide before A.D. 1307*, pp. 166–67. Hurnard has a much fuller account of this trial in which the records retell the account of how Galfrus cut off Agnes's head, believed she was a pig, and then returned to the scene to sew Agnes's head back on.

the time they acted within their own community. Magistrates looked closely at all cases for indications of premeditation. In 1298, the mentally incapacitated Henry Bruneman of Tydington was charged with the murder of a member of his community, Hugh de Faucumbe, but was found not to have committed a felony since there had been no 'malice aforethought' (*malicia excogitata*).⁶⁸ Henry was ill and murdered Hugh 'while in a fit of madness' (*dum in frenetica passione*).⁶⁹ In 1307, William Gray killed Walter Scot while insane and 'unable to distinguish good from evil' (*sciens nec bonum nec malum*).⁷⁰ Neither of these men had been able to plan to murder, and, as the records imply, these 'accidents' occurred because of their inability to realize the implications of their actions.

Sometimes officers found it necessary to look into the behaviour and actions of the mentally incapacitated person prior to his committing murder. In 1306, it was noted that Nigel Coppendene had been a prisoner of war and was 'insane through his sufferings [...] of whippings and beatings' ('idem Nigellus ita verberibus et plagis dilaceratus [...] existuit'). Nigel had lived 'in a continual state of dementia and madness' (*in continuis demencia et furore*) when he murdered Henry Rosselyn. The judges took Nigel to be an unwitting murderer.⁷¹ In another example, the report on Roger Lokguind made the point that the official found that Roger had eaten meat during Lent before he killed Thomas Ram the netmaker.⁷² These justifications provide explanation as to why the crown saw fit to forgo punishment or offer pardon or both to people with mental afflictions who committed homicide.

Infrequently, mentally incapacitated men killed women unrelated to them, and yet there seems to be no additional intent or malice, or any sexual overtones in the records. For example, Adam de Erthe let his 'madness lead him (*furore ductus*) to kill' Agnus daughter of Ethem.⁷³ William Bacheler killed 'Juliana wife of Warin le Soutere [...] while insane at Salisbury'.⁷⁴ Nicholas Stut of Bray

⁶⁸ Kew, TNA PRO, C 260/11, no. 1A and *CCR: Edward I*, II: 1279–1288, 143. The document Kew, TNA PRO, C 260/11, no. 1A, part 2, reads Bunman, instead of Bruneman as on part 1; this document also says he does 'not know good from evil'.

⁶⁹ Kew, TNA PRO, C 260/11, no. 1A.

⁷⁰ Kew, TNA PRO, C 260/17, membr. 6.

⁷¹ Kew, TNA PRO, C 260/16, no. 5; Kew, TNA PRO, JUST 1/934, membr. 3. For more on Nigel, see: Turner, 'Mental Incapacity and Financing War', p. 390.

⁷² Kew, TNA PRO, JUST 3/106, membr. 5d.

⁷³ Kew, TNA PRO, JUST 1/1109, membr. 18.

⁷⁴ Kew, TNA PRO, C 260/36, no. 1.

killed Isabella, wife of Peter atte Pyrye, when he was ill (*infirmirate*) and mad (*frenesi*).⁷⁵ And, James Ardern, in 1285, killed Eve Carleton while insane.⁷⁶ These cases have the same basic form as others and no unusual nuances or innuendos.

Not many mentally impaired or ill women killed other adults. In the following two examples, both women reportedly became physically violent and both had a history of mental affliction. In the first example, reports indicated that others who knew Emma agreed that each year on the anniversary of her husband's death, she went mad.⁷⁷ This year, 1306, during her madness on this morose anniversary, Emma killed another woman, Galfri Wode of Pultenange. In another example, Catherine Ronges of Messing killed Alice Charles, again a madwoman killing another woman. In this sad tale, Catherine, who was *non compos mentis*, 'met Alice at the heath in [Maldon] and struck her on the head with great tiles and with sea-coal, and afterwards threw her into the sea.'⁷⁸ Alice would have been well served by the assignment of a keeper or guardian, a person responsible to keep an eye on Alice, making certain that she and the community were safe.

The job of 'keeper', *custos*, the person responsible to keep a mentally incapacitated person from harm and from doing harm, was not taken lightly. Some guardians acted as keeper and custodian of their ward's property. Others did only one job or the other. Keepers spent much time with their charges, and as a result, occasionally let down their guard. Hugo Persone of Butterrye was the guardian (*custodiam*) of John de Radenore. Hugo unbound John — for some unknown reason — and, in a violent outburst, John killed Hugo. The records say that there had been 'not malice between them' and, furthermore, that because John was a known *furiosus*, his actions of bludgeoning his friend to death with an axe was 'not a felony' since he could not control his actions.⁷⁹ In other examples, the guardian (*custodiam*) of Andrew de Buriton, a *lunaticus*, lost his life when Andrew followed him and killed him.⁸⁰ William Coner

⁷⁵ Kew, TNA PRO, C 66/134, membr. 4; Kew, TNA PRO, C 260/21, no. 10b; Kew, TNA PRO, C 260/3, no. 19; and *CPR: Edward II*, 1: 1307–1313 (1894), 304.

⁷⁶ Kew, TNA PRO, C 145/44, no. 36; Kew, TNA PRO, JUST 1/780, membr. 17d; *CIM*, 1: 1219–1307, no. 2275, p. 608; *CPR: Edward II*, 1: 1307–1313, 334.

⁷⁷ Kew, TNA PRO, JUST 1/467, membr. 7.

⁷⁸ *Select Cases from the Coroners' Rolls*, ed. by Gross, pp. 46–47.

⁷⁹ Kew, TNA PRO, JUST 1/746, membr. 8d.

⁸⁰ The record reads: Andreas de Buriton. Kew, TNA PRO, JUST 1/300c, membr. 23 (1255). I must thank Paul Brand for pointing out this record.

of Hordbode, a *freneticus passione*, beat to death his guardian (*custodiam*), William Berner.⁸¹

Much as with guardians, colleagues spent much time with each other and if one had a mental affliction, given the right circumstances, he might injure or kill someone close to him. Robert Clipston, for example, who had a fourteen-year history of mental impairment, killed his page in a fit of fury.⁸² He was later pardoned for this crime because of his affliction and inability to control his actions.

Another close association among colleagues was between those members of the church, either in a monastic setting or other ecclesiastical situation. Vows to the church of a defendant or an accused individual did not seem to affect the course of criminal proceedings or outcome in medieval English courts, even for a mentally incapacitated ecclesiastic accused of murder. The crown's concern in the case of murder was that a crime had been committed within England, and if the church wished to have its own trial, it was of no concern to the crown. Royal officials saw trials of murder by or murder of an ecclesiastic like any other case. For example, William Bene was mentally incapacitated in 1364, when he killed Alan, the vicar of Walton.⁸³ Alan's position as a priest in no way changed the process of the investigation by civil authorities.

Just as in other trials, sureties were put up as bail to assure the good conduct of a mentally incapacitated individual awaiting trial, even a mentally incapacitated priest. In 1288, 'Elias, vicar of the church of Cristenestowe', murdered Amice de Cristenestowe. Elias was 'out of his mind' (*morbo frenetico detentus*) at the time he committed the murder. Treated as any other citizen, twelve men of the community paid his bail to get him out of gaol to await his trial before the justices 'at the first assize if any one wish[ed] to speak against him'.⁸⁴ With the community backing him, it is doubtful but not certain that no one spoke against the vicar. Robert Webbe, described as *amens* when he committed homicide, also was given a provision for twelve men of the community to pay his pail so that he could await trial in their custody.⁸⁵ In both of these situations, though the mentally impaired individual who committed the homicide had

⁸¹ Kew, TNA PRO, JUST 1/66, membr. 5d.

⁸² Kew, TNA PRO, C 66/120, membr. 26; Kew, TNA PRO, C 260/12, no. 46; *CPR: Edward I*, III: 1292–1301, 493.

⁸³ This name is unclear and might be 'Bere'. Kew, TNA PRO, C 260/75, no. 37. See also: *CPR: Edward III*, XIII: 1364–1367, 373 (6 February 1367).

⁸⁴ *CCR: Edward I*, II: 1279–1288, 514, and Kew, TNA PRO, C 260/10, no. 16.

⁸⁵ Kew, TNA PRO, JUST 3/164, membr. 52.

taken vows to the church, presumably while sane, his case was tried in a royal court with English civil law.

Monasteries were more private, but when it came to murder, communities called in civil authorities to investigate. Investigators went to one monastery to find Richard le Pessonner 'laughing' about the murder he committed. He cared for 'Brother Walter' with whom he shared a room, and Walter apparently 'loved' Richard. Richard awoke one evening 'frantic and mad', then, picking up 'first [...] a form (*formula*), and afterwards [...] a trestle (*trestello*)' and, 'by the instigation of the devil, [he] smote Walter on the head as he slept [...] so that the brains came out'.⁸⁶ In another case, officers again went to an abbey to find a monk in Tanstock who had killed the abbey cook while mentally incapacitated.⁸⁷ Although these crimes took place in monastic environments, civil authorities were called in to carry out the investigations.

It was rare to have a mentally incapacitated person kill a stranger. Even in many of the examples that follow, there is a chance that these individuals had met their victims or that they lived near one another. As in the pardon at the top of the chapter, it is implied that Augustine le Fevere knew William Pilche, though it is unclear whether William knew Augustine. He certainly seems to have thought Augustine a monster, which leads the reader to believe he did not recognize the individual's voice, though, in fun, that too was disguised in 'groans'. It is interesting that William, though impaired, thought enough to ask 'in God's name' for the disguised person to 'speak' and thus reveal himself. William wanted to be certain it was a monster he was killing and not a neighbour, though reality seems to have been at issue, which raises many other questions about what and how this medieval community thought about reality.⁸⁸

Mentally incapacitated persons murdered other seeming strangers under the same type of circumstances as those who killed members of their families or communities. For example, 'Ralph Toldyso de Drusgerd in Drusgerd murdered but was found to be fully *non compos mentis* and completely mad when he committed the evil dishonour' ('Radinus [...] non compos mentis set in pleno ac toto amens in fecit et ignominia diabolica').⁸⁹ Illness could play a part in bringing on a mental affliction capable of inducing violence. Walter Makepais

⁸⁶ Kew, TNA PRO, C 145/44, membr. 40; *CIM*, I: 1219–1307, no. 2279, p. 609.

⁸⁷ Kew, TNA PRO, JUST 3/156 (40–47 Edward III).

⁸⁸ Cohen, *Of Giants*, p. 120; and Gordon, 'God Killed Saul', p. 163.

⁸⁹ Kew, TNA PRO, KB 27/475, membr. 33 Rex. My thanks to Susanne Jenks for her endless support of this project and for sharing this reference with me.

killed Adam Grenhamerton in 1325, for example. Walter was in York suffering from ‘a certain great illness, as well it is said he was mad in his madness’ (‘quaedam magna infirmitate qua dicitur frenesis unde freneticus fuit’)⁹⁰ and, being out of control, killed Adam. Other persons killed ‘while insane’, which, though vague, gives some indication that they were not always in that state. Thomas Erons, for example, admitted to killing while ‘demens effectus sint [...] quod ignorat’.⁹¹ Roger Swein killed five of his neighbours in a ‘fit of madness’⁹² before another neighbour managed to kill him. In 1293, John Marche, possibly a clerk indicated by his title of ‘master’, killed John Bristoll ‘through his insanity (*per insaniam*)’.⁹³ He must have been pardoned for he was again in prison at ‘Notyngnam’ in 1296 for the murder of William de Wynleye, whom ‘he slew in self-defence’.⁹⁴ And, in 1310, Robert Angot, while insane (*huic non sane mentis*) and unable to tell good from evil, killed William Maillie and Thomas de Riston and was later pardoned by the king.⁹⁵ These men all killed other men, sometimes several other men, while out of control both mentally and physically.

Other Felonies

Mentally incapacitated persons could commit not all felonies, not even accidentally. Burglary and robbery included an element of cognitive premeditation — breaking and entering in the case of burglary, and stealing from a person by threat to harm in the case of robbery — actions not possible for a mentally impaired person. One *lunatic* mistaken as a burglar was killed by his neighbour while he tried to make a hole in a door.⁹⁶ Another, Richard Thurbern of Brent, stood accused of one charge of larceny. He came to defend himself accompanied by many witnesses from a variety of towns to explain to the court that he was not guilty and that they (those from the various towns) did not suspect him. The witnesses all agreed, however, that he was guilty of stealing a fowl, a

⁹⁰ Kew, TNA PRO, C 260/37, no. 5; Kew, TNA PRO, C 260/35, no. 9; and Kew, TNA PRO, C 260/34, no. 29.

⁹¹ Kew, TNA PRO, JUST 1/858, membr. 33.

⁹² ‘Shropshire Eyre, A.D. 1203’, in *Select Pleas of the Crown*, ed. by Maitland, no. 70, p. 31.

⁹³ Kew, TNA PRO, C 260/7, no. 46b.

⁹⁴ In 1296: *CCR: Edward I, III: 1288–1296* (1904), 499.

⁹⁵ Kew, TNA PRO, C 260/20, no. 27. The pardon was sewn to the investigation in modern times.

⁹⁶ Kew, TNA PRO, JUST 1/463, membr. 4d.

petty theft, 'in madness at a time when he was a lunatic' ('in furore tempore quo fuit lunaticus').⁹⁷

The same impossibility of premeditation and level of cognition needed to break the law was true of most civil violations, such as breaking contract law or evasion of law. A mentally incapacitated person might have acted out the violence of rape, a psychological as well as physical violation, yet no evidence has surfaced of rape. Of the felonies committed by the mentally feeble or ill in medieval England, other than homicide, they were also found guilty of arson and theft.

Arson was a felony since not only was fire dangerous, it could also cause damage to property and at time whole communities. In 1297, Geoffrey Gasconia went to gaol for burning down houses in Tandridge while he was mentally incapacitated.⁹⁸ In 1306, Thomas Wulmer was also found guilty of arson, which he committed at the 'time of the moon' while a lunatic.⁹⁹ It is likely that both Geoffrey and Thomas were later pardoned and released.

Petty theft and perhaps larceny — carrying off goods from private property — were common crimes among the mentally incapacitated. Their admissions, rather than denials, of guilt underscored the argument that they were not mentally guilty. Many of those on trial admitted they had stolen something, which was often a food item, such as a chicken. At a Hundred Court, Isabell, a *lunatica* and wife of Dick le Fader, admitted her guilt in stealing a goose and a chicken during 'her madness' (*furor*), which the court understood as being beyond her control.¹⁰⁰ Rather than basing the determination of the jury on hunger or poverty, there was a plea that the accused did not know right from wrong. In 1232, Roger Thurl was on trial for theft but it was determined that he did not know good from evil (*sciens nec bonum nec malum*) and could not be held accountable. He was mentally impaired and did not realize what he had done.¹⁰¹ Others, though, seem to have known fully what they had done and when, and they claimed to have periods of time in which they were out of their minds. Henry Yuehust admitted to a theft while he was in *dementia* as a lunatic (*quia lunaticus*) and insane at the time (*amens tempore*).¹⁰²

⁹⁷ 'Somersetshire Gaol Delivery, A.D. 1225'; in *Select Pleas of the Crown*, ed. by Maitland, no. 187, p. 119.

⁹⁸ Kew, TNA PRO, C 260/10, no. 23.

⁹⁹ Kew, TNA PRO, JUST 3/106, membr. 5.

¹⁰⁰ Kew, TNA PRO, JUST 1/62, membr. 5 (1232).

¹⁰¹ Kew, TNA PRO, JUST 1/62, membr. 5 (1232).

¹⁰² Kew, TNA PRO, JUST 1/775, membr. 18 (1236).

A few mentally impaired persons seemingly stole items on a whim. Robert Dura took a horse while he was insane; 'he is a lunatic and he was in a state of fury' ('lunaticus est et in furiositate sua'),¹⁰³ when he stole the animal. Sergerus Chippenham, who did not know good from evil, stole a bone during his 'frenzy and [during] the previous seven years he was a madman' ('frenesi et quod per septem annos ante sint freneticus').¹⁰⁴ The bone could have had meat on it, or it could have been meant for a broth or other food, and the horse could have been stolen for just about any reason, including transportation, cash, or on a lark. Yet, these records do not say that Sergerus was hungry with nothing to eat, or that Robert was in a hurry and without thinking took the horse. These records say they were mentally afflicted when they took something.

Misdemeanours

A trespass or misdemeanour was a minor offence, a violence that might disrupt property without harming it; in other words, a petty theft of something that could be returned or replaced was a trespass, as was violence to a person that did not break bones or draw blood. For example, Robert Barry, who had been granted custody of the lands of his father, an *idiot*,¹⁰⁵ and 'being infuriated' (*in toto furiosus*), he and his father,

Fought with drawn swords. [...] Robert the father [a *soott*] was wounded in the right arm and hit on the head with a stone, but not to the peril of death. All this was done by Robert the son in fury induced by fear of his father, who is possessed by an evil spirit (*ductus est per spiritum maledictum*).¹⁰⁶

Robert the younger and his father, the *idiot* or *soott*, perhaps were 'mad' in more than one sense of the term and got into a fight. His father had a minor bump on the head and a minor injury to his arm and, with no major damage done on either side, there seems to be only this report and no gaol record or

¹⁰³ Kew, TNA PRO, JUST 1/244, membr. 27.

¹⁰⁴ Kew, TNA PRO, JUST 3/103, membr. 3.

¹⁰⁵ Kew, TNA PRO, C 66/260, membr. 30; Kew, TNA PRO, C 66/262, membr. 24; Kew, TNA PRO, C 66/263, membr. 25d; Kew, TNA PRO, C 66/268, membr. 16d; Kew, TNA PRO, C 66/273, membr. 38; Kew, TNA PRO, C 135/143, membr. 6; *CIPM*, x: 26–34 *Edward III*, no. 492, pp. 388–89, no. 664, p. 557; *CPR: Edward III*, xi: 1358–1361, 429, 543; *CPR: Edward III*, xii: 1361–1364, 69, 450; *CPR: Edward III*, xiii: 1364–1367, 223; *CIM*, iii: 1348–1377, no. 635, p. 235.

¹⁰⁶ *CIM*, iii: 1348–1377, no. 612, p. 226.

trial. It was the former guardian, the sister of the father, who remained his 'keeper' since the son had become the guardian of the lands, who reported this trespass, a minor offence of sword fighting. Just as this fight 'disturbed the peace' more than doing any lasting harm, so too many of the thefts of poultry, mentioned above, were considered misdemeanour offences rather than felonious larceny.

In the English royal records there are mentally incapacitated individuals mentioned who wandered away from their communities and were accused of trespass on someone's property without permission. A few mentally impaired persons wandered away from their homes, but not many ever went far. For one thing, communities, not just families, took responsibility for mentally incapacitated individuals, making sure that they were watched by a keeper or at least kept in town.¹⁰⁷ There were some families that, just as with physically disabled or impaired relatives, travelled away from their communities with their mentally incapacitated relatives to shrines, monasteries, or other ecclesiastical or medical locations in an effort to find some relief for their relatives' affliction, if they could afford the trip.¹⁰⁸

Occasionally, a mentally impaired individual slipped through these safely nets and wandered away from home. There are two good examples of men accused of trespassing where they did not belong, Simon Vineter and Thomas Corderye. Simon, 'a lunatic' (*lunaticus*) armed with bow and arrows and accompanied by his dogs, may have seemed somewhat hostile and definitely as if he were hunting. The community of Drauton had not only kept watch over him, but had also 'often taken [him] to Croyland'. On several occasions, officials had brought Simon up on charges of trespassing in the park of Northampton, and the records of 1306 imply that he was released since 'he took nothing there, and was not sent by anybody's procurement'.¹⁰⁹ This account offers an interesting suggestion that Simon and other mentally incapacitated individuals might be easily manipulated for malicious or selfish purposes. The question of someone sending an impaired person out to hunt, knowing there was a good chance of him getting off if caught, may have come up regularly, even though there is a lack of direct evidence in this case. It is feasible that it may have occurred to some unscrupulous friends that the mentally incapacitated would not get into trouble for minor crimes.

¹⁰⁷ Clark, 'Social Welfare and Mutual Aid in the Medieval Countryside', p. 390.

¹⁰⁸ Metzler, *Disability in Medieval Europe*.

¹⁰⁹ Kew, TNA PRO, C 145/331, membr. 12 and CIM, II: 1307–1349, no. 2093, p. 526.

Quite differently, Thomas Corderye (or Ropsled) wandered off in 1309 after he became a lunatic.¹¹⁰ Thomas's wandering was recorded only because his inheritance of the land called 'la Ropselde' came into question and several other people tried to claim it.¹¹¹ Between 1309 and 1311, Thomas had come to be 'confined as a lunatic (*lunaticus*) in Bristol Castle' when the chancellor ordered the constable to release him now that his lands, and presumably his person, had been taken into the king's protection.¹¹² Other persons with mental impairment may have simply wandered off, uncertain of their surroundings in a diminished mental state, or gotten turned around during travels. For the most part, though, in medieval England, the mentally impaired were cared for and kept track of by their communities and families.

Punishments and Pardons of Mentally Incapacitated Criminals

The Mirror of Justices presented conflicting images of the mentally incapacitated: that of the sinner and that of the innocent. Many of the other legal commentaries discussed refer to children, women, and the mentally incapacitated as innocent under the law. Both *Bracton* and *Fleta* compare the innocence of children and the mentally incapacitated using the condition of being unable to discern right from wrong as the reason to allow leniency in these cases for even the most extreme crime of homicide.¹¹³ Paradoxically, the literature of the late medieval world sometimes depicted Jews, women, children, as well as the mentally incapacitated as those elements of society most capable of sin.¹¹⁴ The author of *The Mirror*, though, consistently used the sinfulness of crimes as a factor as well as biblical parables and models to add religious justification to his commentary on law, including those affecting the mentally incapacitated.

¹¹⁰ Kew, TNA PRO, C 145/69, membr. 17 and *CIM*, II: 1307–1349, no. 47, p. 13.

¹¹¹ The land called 'la Ropselde', a messuage in Bristol had been his mother's dower land, 'held of the king in chief by the yearly service of a pair of gilt spurs'. This case may have entered into the royal documents because the land was held directly from the king. Thomas had already claimed the lands and paid the fine to have his claim investigated when he suddenly, it seems, became insane (*lunaticus*) and wandered away. Kew, TNA PRO, C 145/69, membr. 17 and *CIM*, II: 1307–1349, no. 47, p. 13.

¹¹² Kew, TNA PRO, C 54/129, membr. 22, here he is called Thomas de la Ropsled. See also: *CCR: Edward II*, I: 1307–1313, 382.

¹¹³ For *De legibus* see note 15 above; *Fleta*, ed. and trans. by Richardson and Sayles, bk I, cap. 11, § 8 (I, 21).

¹¹⁴ Gilman, *Difference and Pathology*.

The Mirror divided the mentally incapacitated into two, or possibly three, categories: those born mentally incapacitated, those who became mentally incapacitated who lived without lucid intervals, and those who became mentally incapacitated having lucid intervals. This final category, according to implications in *The Mirror*, was the most capable of sin since they were the most aware. For the most part, *The Mirror* painted the mentally incapacitated as innocents. Even if guilty of homicide they did not deserve punishment because they were 'without sin' (*sanz pecchie*) since they had no 'descretioun'.¹¹⁵ The author adds,

Then as to fools (*fous*) let us distinguish, for all fools can be adjudged homicides except natural fools (*fous nastes*) and children within the age of seven years; for there can be no crime or sin without a corrupt will, and there can be no corruption of will where there is no discretion and an innocent conscience, save in the case of raging fools (*fous ragie*).¹¹⁶

'Natural fools,' those born mentally incapacitated, did not have corrupt wills and, therefore, lived without sin, as did young children according to the author of *The Mirror*. The author distinguished between 'natural fools' and other types of 'madmen (*arragez*) [...] for those who are frantic (*frenetics*) or lunatic (*lunatics*) can sin feloniously [...] but not those who are continuously mad (*continuelement arragez*)'.¹¹⁷ In other words, the author wanted to make it clear that those mentally incapacitated who had lucid intervals could be held accountable for their actions. He said they *could* 'sin feloniously', not that they did in every instance.

The author of *The Mirror* wrote much about criminal 'sin' and how those upholding the law should be free of sin. In the process of illustrating a point about who should or should not serve as judges, the author linked bad judges to the mentally incapacitated and the sinful. On those persons who should not serve as judges the author wrote:

Again, serfs cannot be judges, for the status of serf and judge are repugnant, nor can those attainted for false judgement, infamous persons, those under the age of twenty-one, open lepers, idiots (*fous nastes*), attorneys, lunatics (*continuelement arragez*), deaf mutes, the parties to the plea, those excommunicated by a bishop, nor criminal persons. For God himself when on earth held a consistory wherein a woman who was a sinner was to be adjudged to death, and he wrote on the ground and said to the suitors whose duty it was to judge her, 'He of you who is without

¹¹⁵ *The Mirror of Justices*, ed. by Whittaker, p. 136.

¹¹⁶ *The Mirror of Justices*, ed. by Whittaker, p. 138.

¹¹⁷ *The Mirror of Justices*, ed. by Whittaker, p. 139.

sin, let him give his judgment', thus setting an example to judges who every day take upon themselves to judge folk, [...] when he himself is tainted with sin.¹¹⁸

The author's warning to judges seems clear in light of his supposed imprisonment. Here he made clear his point that unqualified and incapable persons should not serve as judges; yet, he drew a connection between the biblical parable of judging and stoning a sinful woman only if sinless and how the sinful and guilty should, therefore, not serve as judges. *The Mirror* collapses any distinction between civil and moral crime and equates all crime with sin.

Even if it were not true that the author of *The Mirror* wrote from gaol, he wanted readers to *believe* he had been imprisoned because of 'false judges', and by insisting that only those who lived a relatively sin-free life could be judges, he implicated all those on his list as the most sinful, including born fools and the 'continually mad'. The mentally incapacitated, as well as women, children, lepers, the deaf, and excommunicates, shared in his idea of the moral taint of sin. By including attorneys and the parties to the plea, perhaps the author simply wanted to make the legal point that some cannot serve as judges. Still, the parable of the stoning following so closely can only imply the intentionality of the conclusion that all those mentioned had taken part in sinful activity. The author's humour or lack of organizational skills cannot be lost on the reader as he placed 'attorneys' between 'idiots' and 'lunatics'.

The mentally incompetent in medieval England, especially after 1240, went to trial but most often juries acquitted them because of their afflictions.¹¹⁹ Records regularly said that the mentally incapacitated could not be held accountable for actions that they could not control.¹²⁰ The treatment of the mentally incapacitated, both for men and women, parallels that of children under the age of discretion.

Most English communities were small enough that most locals knew those who could be dangerous; some communities assigned a keeper (*custos*) to such persons.¹²¹ A mentally impaired person could not always discern well enough to realize that he could hurt or be hurt in certain situations; consequently, when a person began to exhibit such behaviour, the community would assign

¹¹⁸ *The Mirror of Justices*, ed. by Whittaker, p. 44.

¹¹⁹ Clarke, *Mental Disorder in Earlier Britain*, pp. 59–61.

¹²⁰ CCR: *Edward III, XIII: 1369–1374*, p. 165 (30 October 1370); Bracton, *De legibus et consuetudinibus Angliae*, fol. 150^{r-v}, lib. III, cap. 31 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, II, 424); and *The Mirror of Justices*, ed. by Whittaker, p. 138.

¹²¹ Hurnard, *The King's Pardon for Homicide before A.D. 1307*, p. 160.

someone the task of watching over him. The keeper, or sometimes guardian (*custodiam*) was to care for the person, locking him in chains or in gaol during times of the full moon or if he seemed to be becoming uncontrollable. The job of the keeper or guardian could be dangerous. Some mentally impaired persons became violent to the point of murdering their keeper or guardian, and, as mentioned above, the keepers of John de Radenore,¹²² Andrew de Buriton,¹²³ and William Coner¹²⁴ all died at the hands of their charges.

The mentally ill or the ill with mental symptoms at times had trouble controlling themselves physically, which could result in the death of a keeper, caregiver or family member. As well, the mentally incapacitated could kill someone while having a 'fit', or some sort of uncontrolled seizure or angst.¹²⁵ All of these were pardonable since they could not help their actions of having no control.

A few mentally incapacitated persons with violent tendencies were chained or tied up to prevent them from harming themselves or other persons, and most of the time they are described as being handcuffed or chained to the floor or to the wall. Authorities bound John Faytour of Weston with a handcuff (*manica*) after he killed his father when he was 'out of his mind' (*demens*) during a spell in which he could not see reality ('amens existit [...] in tali demencia et furore').¹²⁶ William, the son of John Capella, had 'both his hands and feet bound' after beating his wife, Matilda, to death in Chichester Cathedral in a fit of 'madness' (*furiositate*).¹²⁷ Almost always in cases of violence, whether intended or not, the person charged with the crime would be held in gaol until their trial, as any sane person. In Northampton, when the mentally incapacitated clerk Robert Clipston killed his page, Simon Burgo Santi Patri, Robert was brought before the king's justices. Robert went to gaol to await trial.¹²⁸ Robert Clipston and other violent mentally incapacitated persons might have been kept in gaol and bound indefinitely or until they stopped raging, though they would not otherwise have been corporally punished for their crimes.

During the investigation, the sheriff or justice was to keep the accused in gaol, in part to keep the public safe and in part to keep the accused safe. This

¹²² Kew, TNA PRO, JUST 1/746, membr. 8d.

¹²³ Kew, TNA PRO, JUST 1/300c, membr. 23 (1255).

¹²⁴ Kew, TNA PRO, JUST 1/66, membr. 5d.

¹²⁵ Clarke, *Mental Disorder in Earlier Britain*, p. 58.

¹²⁶ Kew, TNA PRO, JUST 3/158, membr. 11d.

¹²⁷ Kew, TNA PRO, JUST 1/924, membr. 73d.

¹²⁸ Kew, TNA PRO, C 260/12, no. 46.

was especially important for a feeble-minded person, who might not understand how to react to what was happening around him. If he were to run away, the law could not always protect the mentally incapacitated accused of murder because he would no longer be in custody but outside the law. In this 'outlaw' status, those seeking vengeance for family or community could execute him on the spot if the accused tried to flee. The 'childlike' nature of the condition of many mentally incapacitated persons caused more than one to forfeit his life by fleeing before an investigation could even begin.¹²⁹ After about 1240, the accused was supposed to be held for trial, not executed immediately.¹³⁰

Before 1300, if a mentally afflicted person fled the scene or court, he would have been considered outside the law. When and if caught, he was often killed before the trial's outcome or the issuance of a pardon. Thomas le Hert, for example, never got his pardon. He killed his own son, Stephen, 'when insane' ('fuit infirmitate per quem incidit in frenesim')¹³¹ and the following year (1288) Henry atte Cherche and Henry atte Berton were bailed out of prison after they murdered Thomas.¹³² Henry Darton, mentioned earlier in this chapter, had been detained for the murder of Lottis Lych, but at some point he was released and in a 'frenzy [...] drowned'.¹³³ Whether or not he got a pardon is hard to say; it would come down to his state of mind at the time of the murder.

Court officials tended to hold those mentally incapacitated persons who committed crimes pending further information, and, before about 1310, often referred these cases to the king.¹³⁴ All of the mentally incapacitated arrested for crime in later medieval England were to be gaoled pending the outcome of the investigation and trial. Certainly officials took more care prior to any execution or maiming of a mentally incapacitated person accused of felonious crimes for the obvious reasons of not wanting to incite the community by punishing an innocent. At the same time, the royal officers did not want to endanger the community with a criminal who deserved punishment.¹³⁵

¹²⁹ Pollock and Maitland, *The History of English Law*, I, 304–05 and 477.

¹³⁰ For information on punishments and perceptions of torture, see: Dean, *Crime in Medieval Europe*, chap. 6, pp. 118–43; and Baraz, *Medieval Cruelty*, chap. 4, pp. 75–122.

¹³¹ Kew, TNA PRO, C 260/4, no. 13.

¹³² CCR: *Edward I*, II: 1279–1288, 501.

¹³³ Kew, TNA PRO, JUST 1/806, membr. 22d.

¹³⁴ Lyon, *A Constitutional and Legal History of Medieval England*, pp. 465–66.

¹³⁵ Clarke, *Mental Disorder in Earlier Britain*, p. 58.

Men and women who were ill and killed a family member were also kept in gaol awaiting trial, and depending on the outcome of the trial, they would be pardoned and released, pardoned and held for observation if their mental state were in question, or punished if found to be sane at the time of the crime. For example, in 1282, the sheriff imprisoned Jordan de Wrydewelle for the death of his daughter, Margery,¹³⁶ even though he had been 'insane' ('furore [...] quod tunc temporis fuit amens') at the time of the murder. In this instance, the sheriff was bound to imprison the accused to ensure that he would stand trial. At other times, imprisonment was meant as punishment, but often officials used gaol simply as a way of containing a potentially dangerous individual until he regained his sanity or until a suitable guardian situation could be arranged for him. Most mentally incapacitated parents accused of their child's murder, since it was understood that they could not understand or control their actions during an illness or mental episode, were not punished in a conventional sense.

An individual's gender seems to have had no influence on how due process of law was carried out, although the status of women was quite clearly subordinate to the men in their lives in the written records. Mentally incapacitated women tried for murder were treated just as an accused father would have been. Maud Levyng was taken to prison to await the outcome of her investigation and was subsequently pardoned for the murder of her son and released.¹³⁷ The same was true for Amy (*Amya*) in 1281 when she murdered her son, John, 'the son of Stephen Brumman', while she was 'mad for fifteen days' (*rabie pro xv dies*).¹³⁸ Agnes was 'ill with the infirmity of frenzy' (*infirmirate frenesis*) when she was tried for the homicide of her daughter Rose, the daughter of Robert de Burley, in 1306.¹³⁹ The courts strongly considered Maud's mental incapacity at the time of the death of her son, and she was granted a pardon for her actions, as was Agnes.

Most mentally incapacitated persons who committed homicide were granted a pardon, especially those who accidentally or unintentionally killed their children. Just as in the text of the proceedings for John Beneit, discussed above, the court found that since he was ill and acting irrationally, he had killed his children because of the illness 'and not for felonious reasons'.¹⁴⁰ Those persons mentally incompetent from birth were treated somewhat differ-

¹³⁶ Kew, TNA PRO, C 260/2, no. 25 and *CCR: Edward I*, II: 1279–1288, 151 (10 April 1282).

¹³⁷ Kew, TNA PRO, C 260/3, no. 19. See also: *CPR: Edward I*, III: 1281–1292, 146.

¹³⁸ Kew, TNA PRO, C 260/2, no. 41.

¹³⁹ Kew, TNA PRO, C 260/16, no. 24.

¹⁴⁰ Kew, TNA PRO, C 66/109, membr. 6.

ently. Without reason, they could not be trusted to give testimony in a clear minded or true sense in court other than to be questioned by officials to get a sense of their competency. Other persons were called on to testify as to their competency and to the circumstances of the case, and in all cases when they truly were mentally incompetent, the charges would be dismissed because they were incapable of malicious or felonious intent. In other words, even if a mentally incompetent person committed murder with intent, and that person was known to have been incompetent from birth, his intent was weighed quite differently than a sane person's intent because of the criminal's mental innocence. In cases of murder by a mental incompetent, the court could likely point to the person as having committed the crime, but did not punish the guilty party who was mentally feeble because of his inability to understand what he had done.

Nicholas le Stut of Bray while he was mentally incapacitated (*in furore*) killed the wife of Peter atte Pyry, Isabella, and was pardoned by the king later that year (1310).¹⁴¹ John Beneit of Wodenese also got a pardon from the king in 1290 after killing his wife, Alice, and two daughters, Mariota and Alice, 'in a fit of madness (*per frenesimus morba acute labortas*), while labouring under acute disease'.¹⁴² The king did not hold these 'murderers' accountable for their actions — they were treated as innocent and their crimes as accidents, 'misadventures', whether mentally incompetent or mentally ill.

Unusual and understandable circumstances, such as mental incapacity or mental illness, offered the most straightforward path to pardon or dismissal of charges. John de Radenore, for example, had a violent outburst against his friend and custodian, Hugo Persone of Butterrye, and killed him. The records mention that there had been 'not malice between them'. John had been known prior to this incident as a *furiosus* and as such was 'not a felon' since he could not help his actions, even the extremely violent actions of bludgeoning his friend to death with an axe.¹⁴³ Some legal commentators understood the mentally incapacitated to be like children, innocent since they could not understand their actions, and this legal category included those persons with temporary mental illness. This sentiment was reflected in the language of the administrative records as when Henry Brumman killed a man in 1298 'when in a fit of madness (*frenetica passione*) and not of felony or malice aforethought'.¹⁴⁴ The court

¹⁴¹ Kew, TNA PRO, C 260/21, no. 10 (Gaol Delivery) and *CPR: Edward II*, I: 1307–1313, 304.

¹⁴² Kew, TNA PRO, C 66/109, membr. 6. See also: *CPR: Edward I*, III: 1281–1292, 390.

¹⁴³ Kew, TNA PRO, JUST 1/746, membr. 8d.

¹⁴⁴ Kew, TNA PRO, C 260/11, membr. 1a and *CCR: Edward I*, II: 1279–1288, 143.

officials tried to determine the intent, or lack thereof, to cause harm, and they watched for the few guilty persons who tried to claim mental breakdown as the reason for their crimes.

Until the pardon came through, or a guilty verdict was found, the accused person's property needed to be cared for by someone. For example, the king confiscated William Belle's property after he killed John Geppe (Belle) and held it for safe keeping until he regained sanity at which time they were to be returned to him.¹⁴⁵ As stated in the Close Roll concerning William Belle, 'Madmen committing crimes in their madness ought not by law to undergo the extreme penalty nor to forfeit their goods or chattels'.¹⁴⁶

In extreme cases, mentally incapacitated persons died before a trial could even be organized, either because they were killed in self-defence or because family or neighbours had taken the law into their own hands. For example, Roger Swein had flown into a fit of insane madness (*insania*) and killed five men before Robert de Herthale killed Roger in self-defence.¹⁴⁷ When Roger Swein died, it was not at the hands of justice but at those of one of his neighbours. Those who died as their family and neighbours tried to subdue them, as in the case of Roger, unfortunately had not been restrained earlier. While those who killed the accused would also then have to stand accused of murder; they were also considered under special circumstances and often released. The court later acquitted Robert of the death of Roger Swein. The sheriff confiscated Roger Swein's chattels (worth two shillings) and, as indicated in later legal texts, more than likely gave them to his heirs or, if not found, to the church to pray for Roger's soul.

A few mentally incapacitated persons who recovered from their impairments, left their communities, and royal records do not list the cause of these travels as being a rejection by their community. It was unlikely that a mentally ill person travelled alone or went on pilgrimage to a site to be cured while incapacitated; rather, the now sane individual pardoned of a crime that he had com-

¹⁴⁵ Kew, TNA PRO, C 54/208, membr. 4. See also: *CCR: Edward III*, XIII: 1369–1374, 165.

¹⁴⁶ *CCR: Edward III*, XIII: 1369–1374, 165 (30 October 1370). Similar statements in cases include: the homicide of John de Bristoll by John del Marche in 1293 while he was mentally incapacitated, in Kew, TNA PRO, C 260/7, membr. 46b; Walter Makepays, mentally incapacitated in 1324 or 1325, killed Adam de Grenhamerton in York, in Kew, TNA PRO, C 260/37, membr. 5, Kew, TNA PRO, C 260/35, membr. 9, and Kew, TNA PRO, C 260/34, membr. 29; and, Robert Angot, while mentally incapacitated, slew William Maillie and Thomas de Riston in 1310, in Kew, TNA PRO, C 260/20, membr. 27.

¹⁴⁷ 'Shropshire Eyre, A. D. 1203', in *Select Pleas of the Crown*, ed. by Maitland, no. 70, p. 31.

mitted while he was mentally incapacitated might go on a pilgrimage of atonement. This possibility was greatest in cases of murder. Almost as if in homage to a second chance at life or to cement the pardon, or to get away from the site of the crime for a while, those formerly afflicted and now recovered often left the country as a pilgrim to a holy sight — in another part of England, in France, in Rome, or beyond to the Holy Lands — depending on what he could afford. A good example mentioned earlier is William Bene, the man who murdered Alan, the vicar of Walton, in 1364.¹⁴⁸ William left the country after receiving a royal pardon in 1367, ‘going on pilgrimage beyond seas by the king’s licence’.¹⁴⁹

* * *

Non-violent crime was not possible for mentally incompetent persons, unless lucid, in which case they were not afflicted at the time of the legal transaction. Some persons did try to make contracts while lucid to avoid wardship, protect their heirs, or otherwise make money. Royal officials overturned many of these the moment the person’s sanity was questioned, even long after the time of the transaction. The crown upheld a few, carefully witnessed, contracts of this sort, and this topic is taken up further in the chapter on ‘Royal Prerogative Wardship’.

Royal officials overseeing criminal trials were to make certain that the mentally incompetent were not falsely accused of crimes by relatives or neighbours. For example, in 1359, John Gernet was charged with murdering ‘Thomas the husband of Margery Gernet’. The record goes on with the accusation that he ‘was outlawed, and having become an idiot of deficient memory, alienated [his lands]’.¹⁵⁰ The escheator, who had taken the lands into the king’s hands, found that John Gernet had not killed Thomas nor was he mentally incapacitated, and that he had quitclaimed the property in question ‘about Michaelmas’. Mistakes could be made and were; but the accused person could legally challenge and correct the judgement. Through careful investigation and questioning, sheriffs, judges and escheators discovered false accusations of mental incapacity and outlawry.

The mentally incompetent could be guilty of felonious crime: murder, arson, or theft. Sometimes mental incapacity came on quickly, and those afflicted who lashed out against their families, neighbours, colleagues, or stran-

¹⁴⁸ Kew, TNA PRO, C 260/75, no. 37.

¹⁴⁹ Kew, TNA PRO, C 66/275, membr. 38; and *CPR: Edward III, XIII: 1364–1367*, 373 (6 February 1367).

¹⁵⁰ Kew, TNA PRO, C 145/180, membr. 9 and *CIM, III: 1348–1377*, no. 365, p. 130.

gers could be sent to gaol with their lands under the control of the local sheriff or other royal official, especially if they continued to be violent. The official royal position was much like that stated by the legal writers: a person who had continuous issues with mental incapacity, who was not having a lucid interval at the time of a murder, would not be held responsible because he did not have the mental capacity to understand what he was doing. The court needed to determine early in its investigation whether or not the person in question ever had periods of lucidity and whether he could have been lucid at the time of the murder. Most mentally incapacitated murderers were held for a time, awaiting trial, pardoned by the crown, and sent home once sanity returned or under the guidance of a keeper. A few were prosecuted to the full extent of the law and executed; usually, these individuals' 'insanity' pleas were questionable, and some even admitted to knowing much about the crime. In most cases, a mentally impaired person would have no idea what he or she had done wrong, and might admit to knowledge of what happened but without any awareness of right and wrong. Those mentally incapacitated without property normally did not enter the royal records unless they broke the law; therefore, mentally incapacitated criminals without property offer a rare look at the lives and treatment of those mentally incapacitated who were not heirs.

The mentally incapacitated who committed most of the violent crimes in medieval England were normally sane persons who were ill with a temporary incapacity. Many murdered someone close to them: a family member, a neighbour, a colleague, or themselves. All of those accused of crimes, especially violent crimes, were held in the custody of a royal official until the time of their trials. If their violence continued, some were chained or bound in some manner to keep them from harming themselves or others. By the end of the twelfth century, for the most part locals no longer punished felons without allowing them due process.¹⁵¹ The norm for crimes involving the mentally impaired or ill from about 1300 to 1600 became pardon. A few persons even went on pilgrimage to atone for accidental crimes that they committed without knowledge while *in frenesi* knowing *nec bonum nec malum*.

¹⁵¹ Pollock and Maitland, *The History of English Law*, I, 476–81; II, 462–511.

PROTECTING INHERITANCES

In the manor of Lee is a chapel, founded time out of mind by the lords of that manor, in which were several ecclesiastical ornaments given by the said lords to remain there for ever, *viz.* a chalice, price 13s. 4d.; a vestment entire price 30s.; a cross of gold and silver, price 10l. There were also in the said chapel divers relics, a hand of St Stephen, and a bell called 'Mungowbelle', and divers other relics which John de Brewes, sometime lord of the said manor, conferred on the said chapel, which Norman de Swynford, knight, alienated and took away after the death of the aforesaid Margaret. He also sold [...] [these lands, etc.] to the disinheriting of the said John de Breouse, idiot.¹

When a mentally incapacitated person in medieval England was without an inheritance, he lived in the care of his family or community.² If he had no inheritance and had committed no crime,³ he might not be accounted for in royal records; he could not have been counted among the concerns of the administration. As a result, little can be said here about his care, or the care of others without property, with any certainty.⁴ Those mentally incapacitated individuals with property, however, definitely were of interest to their families, neighbours, and the crown or local magistrate, if the properties were not feudal. These disabled persons were at the mercy of those around them to make sure that they actually inherited. Others, who might have claims on the

¹ *CIPM*, x: 26–34 *Edward III*, no. 211, pp. 190–91.

² Clark, 'Social Welfare and Mutual Aid in the Medieval Countryside'.

³ For more on mentally incapacitated criminals, see Chapter 5 above.

⁴ See Clark, 'The Custody of Children in Manor Courts', pp. 333–48.

inheritance or found they might profit from it, could be a threat to the disabled heir. Still others might realize that in his particular situation, it was to his benefit to protect the heir, siphoning income away from the crown or family.

Most of the time, the family was involved. When the land was held as part of a feudal relationship, the lord was also involved. In the twelfth and early thirteenth centuries, families and lords arranged for a custodian to care for a mentally incapacitated heir. Usually this was with members of the family; on occasion it was the lord or his representative. Around 1250, a shift began to take place in the structure of the care and custody of mentally incapacitated landholders. This change took the control over these landholders and their inheritances out of their families' or lords' hands and placed it into the king's, and ultimately into those of guardians of the king's choosing. This chapter explores the shift from family driven care and custody of mentally incapacitated landholders to the crown exerting its prerogative in the land to provide care and take custody of the lands of the mentally incapacitated.

The king, lords, and families of mentally incompetent landlords, treated them predominantly as obstacles to land production, while regarding them also as persons of innocence and illness. Mentally feeble landholders came to the attention of the court or chancery when conflicts arose between members of the family, frequently over inheritance or other land issues, or between the family and the lord. If the family continued all of the obligations of the land — keeping it in production, paying their taxes, and attending to duties associated with the land — the lord and king might overlook the matter. As Milsom puts it, 'It is only when the value of military service visibly lost all relation to the actual revenues of the land that a lord would invite bids for a *custodes* or keep the revenues for himself'.⁵ Only when profits flagged, or when duties went untended, or when a family publicly squabbled over holdings did a lord or possibly the king take immediate notice and action.

A mentally incompetent individual under the care of his father, even with an inheritance from another source, was also generally not in the records. The father was not called a guardian, custodian, or keeper. The crown, and society, assumed him to be the head of the family and as such responsible for his adult children who were unable to care for themselves, no matter the reason.⁶ When the change in custody took place, the king continued to recognize the father of

⁵ Milsom, 'Inheritance by Women in the Twelfth and Early Thirteenth Centuries', p. 64.

⁶ Lyon, *A Constitutional and Legal History of Medieval England*, p. 464; and Biancalana, *The Fee Tail and the Common Recovery*, p. 10.

a mentally incapacitated individual as the responsible party, even if the mentally incapacitated person inherited from another party other than his father.

Lands of Mentally Incapacitated Heirs

As far as the author of *Britton* was concerned, those who became mentally incapacitated by illness after birth could not be considered part of the group affected by this new rule concerning royal wardship. *Britton's* interpretation applies to the cases specifically of the *fōl nastre*. This made it quite clear that the author of *Britton* understood this rule could not be applied to those persons who later became mentally incapacitated and that they would not receive the same treatment from the king, however much this was not the case in practice. Other situations covered in *Britton*, such as that of an assize or other land transaction, treated both those born as 'idiots' and those who became mentally incapacitated the same:

If the tenant is deaf and dumb naturally, and the same is not lately come upon him through sickness, or if he is a mere madman (*si il soit purement arragé*) or a fool from his birth (*fōl nastre de nativité*), so as to be incapable of discretion (*issint qe il ne sache point de descrecioun*), the assize shall stand over until he is in a better state.⁷

A few persons did regain their health, but it is highly unlikely that this was as common an occurrence as the author made it seem. Those persons born mentally incapacitated and those who became mentally incapacitated as well as other persons who were 'incapable of discretion', the author of *Britton* treated the same with regard to assizes.

According to *Britton*, certain individuals needed to be barred from business transactions because their status in society had caused them to lose their eligibility to make such transactions:

Felons cannot after the commission of their felony make any alienation, which may not be revoked by the lords of the fee by our writs of Entry and Escheat, And bastards enfeofed to themselves and their heirs (where assigns are not specified in the feoffment) cannot alien so as to prevent the lords of the fees from having the lands aliened as their escheat. Nor may infants within age, nor natural fools (*fōls nastes*), nor madmen (*gentz arragez*), nor deaf persons, nor dumb, nor lepers removed from the society of people, nor villains, make any alienation, nor sokemen of their socage.⁸

⁷ *Britton*, bk II, chap. 1, § 55 and bk III, chap. 22, § 11 (*Britton*, ed. and trans. by Nichols, I): 'Exceptions of felony and bastardy, and other exceptions to the assise.'

⁸ *Britton*, ed. and trans. by Nichols, bk II, chap. 3.(1, 222–23).

Britton, like almost all other works that discussed the mentally incapacitated, divided them into two groups: natural or born fools; and the mad or recently mentally incapacitated. *Britton* also made a specific division between deaf persons and those who were dumb, although those with other physical handicaps were not discussed or considered part of this category. *Britton* concluded that those without the ability to care for the land should not lose it, but would not know best how to buy, sell, or give it away. *Fleta* asserted the same, 'But a lunatic cannot stipulate or conduct any business, because he does not know or understand what he is doing.'⁹

It was true that all land transactions would be null and void if made with a mentally incapacitated person, unless that individual could prove that the purchase had been made at a time when the seller was sane. That, though, could be difficult. For example, in 1290 Reginald de Berewyk and Peter Sarnel stood before the king and parliament to try and defend the fact that they were the rightful heirs of William de Clamberge, a person 'not of sound mind or good memory'. They claimed that William had granted 'a messuage and 120 acres of land' to the king when William was not mentally sane. The council for the king told the opposite story and wanted Reginald and Peter punished for slander against the king and charged penalties for bringing a false claim. At a later parliament that same year, Reginald and Peter called the affair a 'scandal done to the king',¹⁰ demanding that the king's ministers who 'bought' the land and 'knew' that William was 'out of his mind' should be punished. It could be costly and difficult to overturn 'agreements' between a mentally incompetent individual and another party because the original landholder could not attest to his actions in a state of mental disarray.

Thirteenth-Century Families and the Crown

In the early thirteenth century, mentally incapacitated persons were not a category of individual sought out by the king or his representatives. The king became involved in legal disputes that touched on royal lands or on areas under common law; if they happened to involve a mentally incapacitated person,

⁹ *Fleta*, ed. and trans. by Richardson and Sayles, bk II, cap. 56 (II, 189). See also Bracton, *De legibus et consuetudinibus Anglie*, fol. 323^v, lib. IV, cap. 5, § 10 (Bracton, *De legibus et consuetudinibus Angliae*, ed. by Woodbine, IV, 36).

¹⁰ Kew, TNA PRO, SC 9/1, membr. 3 and Kew, TNA PRO, SC 9/2, membr. 6. 'Edward I: Parliament of Easter 1290, Text and Translation', ed. by Paul Brand, in *PROME*, ed. by Given-Wilson and others, item 15 (11) (tr-I, 23), and item 201 (172) (I, 60).

the king looked at the situation with that in mind. In this way, the few misunderstandings of laws, disagreements between family members, came before the king — the usual authority to solve these types of matters at the time — when the landholder was unable to speak or reason for himself. In 1248, for example, two sisters, their husbands, and a nephew claimed that the brother of the two sisters, Roger Blik, gave the local chaplain a message of his land while ‘mentally incapacitated’ (*non fuit compos mentis sue*).¹¹ They claimed that it should belong to them as the heirs and not the abbot to whom the chaplain, Bartholomew, had in turn given it. In contradiction to their claim, the jury found that Roger had been ‘of good memory and sound mind’ (*fuit bone memorie et compos mentis sue*)¹² when he gave the land to the chaplain, and the relatives were in mercy for a false claim. The jurors did not say that Roger had always been of sound mind, only that he had been at the time of the land transfer.¹³ In another example, it appears that two brothers from different fathers fought over some property of Alice Gaudi, their mother. John claimed that his mother, Alice, was ‘not of sound mind’ (*non fuit compos mentis sue*)¹⁴ when she demised lands to her other son, Reynold. Reynold produced her charter and said that Alice enfeoffed him when she was ‘of sound mind and good memory’ (*quando fuit compos mentis sue et bone memorie*).¹⁵ Later, John agreed to Reynold’s holding of the land but only after both had paid court expenses and sureties for the privilege of ending up where they had been before the trial. Had Alice been aware and not mentally impaired, she could have settled the matter without it having come to the attention of the crown. In both of these trials, the defendant had evidence — a charter in Reynold’s case — which in and of itself proved the person had been sane at the time, otherwise the officials would not have granted it in the first place.

In a plea before the King’s Bench in 1298 Johanna Pontefract had her lands unlawfully taken out of her possession by Henry and John Pontefract (not her brothers, but possibly her uncles, male relatives nevertheless).¹⁶ John gave up his claim. Henry, though, had paperwork to prove his rights in the land, a char-

¹¹ *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 440, pp. 186–87.

¹² *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 440, pp. 186–87.

¹³ *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 440, pp. 186–87.

¹⁴ *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 237, p. 105.

¹⁵ *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 237, p. 105.

¹⁶ Forgery and coercion were possible, and documents were checked and witnesses questioned. For more on this topic, see Chapter 5.

ter by Johanna and a letter verifying the same by William of Batley. Johanna claimed she knew nothing of these documents and that she had never intended to 'change her status'. According to the jurors who said

on their oath that the aforesaid Johanna, whilst she was laid up with a serious illness so that she was out of her mind, made the aforesaid charter and letter, and they say that, when she got better, [...] it was said to her that she was said to have made the aforesaid deeds, and these she denied altogether.¹⁷

This time the authorities believed those who came forward in favour of Johanna and they returned her lands to her after some further questioning concerning her mental condition: 'And they say that the aforesaid Johanna was in good and peaceful seisin of the aforesaid tenements until the aforesaid Henry and John unlawfully etc. disseised her thereof with force and arms'.¹⁸ The mentally incapacitated were vulnerable, and royal officials were aware of this, investigating as thoroughly as possible.

The king began taking custody the lands of the mentally incapacitated as part of the trial procedure, often placing lands of questionable providence in the hands of the sheriff until the conclusion of the trial.¹⁹ A good example of which involves two sons who were both named for their father William de la Ferers: one, a 'full' heir or the child of the married father and the other, a bastard of the father, called William de la Forz.²⁰ At some time during his life, the father had given the bastard son sixty acres in Yoxall, probably because a bastard child would have ended up with nothing if he did not get an inheritance while his father was alive.²¹ The 'full' heir, who was also the new Earl of Derby, did not want his half-sibling to get any inheritance and claimed that his father was 'not of sound mind' (*non fuit compos sui*) when he gave the lands to the bastard William.²² William de la Forz did not show up for the trial and a summons was issued; his lands were to be taken into the king's custody until the settlement of the trial.

¹⁷ *Select Cases in the Court of King's Bench*, ed. by Sayles, III: *Under Edward I* (1939), no. 39, p. 66.

¹⁸ *Select Cases in the Court of King's Bench*, ed. by Sayles, III: *Under Edward I*, no. 39, p. 66.

¹⁹ For more on the role of the sheriff in late thirteenth- and early fourteenth-century trials especially, see Chapter 5.

²⁰ *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 541, p. 231.

²¹ *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 541, p. 231.

²² *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 541, p. 231.

In 1251, Henry III 'discovered John Gerard in mental disorder' (*mentis sue incompas*).²³ He had been in this state for twelve years or more, during which time he had been 'in continuous senselessness' (*demencia continua exstitisse*).²⁴ The king's officials did not assign John a guardian nor was that even discussed. They investigated his lands because, according to his son's widow, Rose, John had given one third of his tenement in Inkberrow to his son Robert as part of an assignment of dower to her.²⁵ The inquiry was postponed until John was in a better state of mind. In another example of a postponed case, ten years later, William, the son of Geoffrey de Wautr, asked to be granted the sixty acres in Wowenden that belonged to Ralph de la Halt, 'a lunatic and one who has no power over his mental faculties' (*lunaticus est et impos mentis sue*).²⁶ This case was also postponed until a later time, possibly to wait for Ralph's condition to improve, but in this case the reasons are unclear. Henry was interested in keeping the lines of inheritance straight and clear, not necessarily of prying into every household of a mentally incapacitated landholder.

In the early thirteenth century, the father of a mentally incapacitated child, or other relative, could arrange for a guardian or custodian for his heir. This had a couple of advantages and was common practice until the last quarter of the thirteenth century: first, the parent would have provided for the safety and care of his child before he died; and second, the inheritance line would be clear if carefully acknowledged by all parties.

Although a system of royal wardship for the mentally incompetent was not fully in place in the middle of the thirteenth century, the king did protect mentally incompetent people by providing custodians, or guardians, to protect the lands and persons when and if a custodian provided by a family was not upholding the rights of a person or was abusing the land. Both negligent and competent lords could upset or uphold the claims of the family. For example, in Northumberland, the daughters of Adam of Neussom wanted the lands of their brother, Richard, a simpleton (*stultus*).²⁷ 'John de Seitun and wife Denise and Roger Mauduit and wife Isabel came before king and council at Newcastle on

²³ *Close Rolls: Henry III, VII: 1251–1253*, 177 (1251).

²⁴ *Close Rolls: Henry III, VII: 1251–1253*, 177 (1251).

²⁵ *Close Rolls: Henry III, VII: 1251–1253*, 177 (1251).

²⁶ Kew, TNA PRO, KB 26/171, membr. 11d (1261).

²⁷ Many thanks to Paul A. Brand for pointing out this case and a few others included in this chapter and others, which he had 'collected' while looking through the rolls at The National Archives. Kew, TNA PRO, KB 26/147A, membr. 10 (Northumberland, 1252).

Tyne' and asked for seisin of lands of Adam of Neussom, deceased, the father of Denise and Isabel.²⁸ Adam had named the lord, Eustace de Laval, as the custodian of the land so long as Richard did not marry.²⁹ Richard was a 'simpleton and such as was not able to hold the land' ('stultus et talis quod terram tenere non potest') on his own.³⁰ Adam's daughters were upset because they had assumed they would inherit after Richard because he would not have an heir. Yet, suddenly it seemed, Richard had married Margery (Margaret) de Whitele, whom the sisters claimed was pregnant prior to the marriage and who was, at the time of trial, declared to be early in her pregnancy. Adam's children argued that Eustace had instigated the marriage to keep them from their inheritance. Indeed, Margery was fined for marrying without a licence and examined to determine the date of her pregnancy, which the examiners (*xij matrone*) said was either fabricated or early in the first term. The king and council feared that the custody as arranged was not in the best interest of Richard, and so they appointed Robert de Camhou as custodian of Richard's land. Robert agreed that he would not waste the lands and would pay all of the expenses of Richard and Margery. Eustace remained in control of the 'body' of Richard but was fined fifty marks for his part in the affair.³¹ Another person of the council's choosing, John son of Simon was to have the land if Robert died, and the 'body of Richard' if Eustace died. The sisters did not, according to these records, get anything except perhaps the satisfaction of seeing Eustace punished. The king and council did provide Richard with a guardian but they would not have acted to give Richard a custodian, except that Eustace had overstepped his agreement with Adam.

Establishing Care and Custody of Wards and Lands

By the mid-thirteenth century, cases of dispute over land and inheritances of mentally impaired or incapacitated persons had cropped up enough that it seems to have warranted a regulation or systemization of these persons and lands. Henry was not about to let these lands slide either into disrepair or into the wrong hands through illegal means. Throughout the mid-thirteenth century, it is clear that he was pulling these lands into his own control and re-

²⁸ Kew, TNA PRO, KB 26/147A, membr. 10.

²⁹ Kew, TNA PRO, KB 26/147A, membr. 10.

³⁰ Kew, TNA PRO, KB 26/147A, membr. 10.

³¹ Kew, TNA PRO, KB 26/147A, membr. 10.

granting them to those within the incapacitated person's family or to others Henry trusted to guard over during the period of incapacity of the landholder. This concept of royal prerogative wardship slowly becomes a part of the overall responsibility of the king as overlord of all feudal lands. The change did not happen overnight, but from the mid-thirteenth century on, regularly, royal authorities, if not the king himself, assigned guardians to care for mentally incapacitated feudal landholders and their properties.

Once the king or his authorities had determined that indeed the person in question was mentally incapacitated, for what length of time, and whether continuously or not, the investigation turned to the lands that this person held. The authorities wanted to know the conditions under which the individual held the land, and if any lands since he had become mentally afflicted or had inherited had been exchanged, sold, or leased. In the prolegomena to a wardship, the king required all property that was part of the inheritance be accounted for and in the king's hands. Assuming someone had made a transaction, one important question asked by many officials was whether the person was sane at the time he made a change in his holdings. If sane at the time of the transaction, then he had acted lawfully, the transaction was valid, and the lands were returned to the new holder. The exchequer often wrote as if he were concerned about the possibility that lands of the mentally incapacitated might have been sold, taken, swindled from, or alienated out of the original inheritance thereby diluting the future inheritance. To prevent this, the sheriff or escheator took immediate custody until all other matters — the debts were paid, the lands' worth determined, the heir established, and the choice of a guardian made — had been resolved. Only then was the ward turned over to a guardian, normally a member of the family.

After securing an inheritance, the king took the opportunity to pay off the debts of those from whom the inheritance derived, out of the inheritance. This action had a few results: the inheritance was clear and in good monetary order for the heir; no one could place a lien on the property and drain its worth; and if granted to a guardian, the grantee could not assert that the property was worth less than what the king claimed. A good example of the king's involvement with wardships began on 17 April 1276. Richard de Bury, sometimes called Richard de Insula, murdered William de Ardern, with the help of eight accomplices. Richard de Bury had performed some work for William. Having not been paid since 'the war-time';³² he murdered William in his effort to

³² *CIM*, I: 1219–1307, no. 2200, p. 589.

recover his pay. William owed money to nearly everyone; the king even gave him some support and relief to catch up with 'divers debts due from him to divers Jews of the realm'.³³ One of William's lords, Henry de Sheldon, demonstrated to the king that he, too, was owed money out of his vassal's property. The king allowed Henry 'to have his relief and services from the issues of the land'³⁴ before the lands went to the heir. William's heirs were his mentally incapacitated brother, Richard, and his two young sons, William and Ralph, all of whom needed guardians. The king gave Bartholomew de Suthley, who also held in wardship some of the Walerand lands,³⁵ the wardship of the elder son and namesake of William.³⁶ The wardship of Richard might have been granted to his lord, Roger de Mowbray, but Roger was not of age and a ward of Roger Lestrangle at that time. Therefore, the king gave Richard Ardern's wardship to Eleanor, the queen consort. She re-granted this to Alan de Walkingham, the king's sergeant,³⁷ for a yearly rent of 10*l.*, and he held it until Richard died in 1284. William and Richard's other relatives all prosecuted claims for the inheritance, which the king and queen ordered divided between the heirs.³⁸ Even though the lands had been in wardship for some time, the heirs could be reasonably certain that they received their inheritances debt free and without any others having claims.

Richard Ardern's wardship made money for the crown as did all wardships, including those of Ardern's relative and his lord. The business of wardships was lucrative for the crown and for guardians in the fourteenth century. All of these wardships funnelled through the hands of the king, bringing in fees and rents to the crown.

The king often used guardianships, especially of those born mentally incapacitated, as payment for his staff rather than using cash from the exchequer.

³³ *CCR: Edward I, 1: 1272–1279* (1900), 100 (28 September 1274). See also: Kew, TNA PRO, C 54/96, membr. 4.

³⁴ *CCR: Edward I, 1: 1272–1279*, 314 (26 October 1276).

³⁵ See Chapter 2 above.

³⁶ *CPR: Edward I, 1: 1272–1281* (1901), 171 (1276). See also: Kew, TNA PRO, C 66/98, membr. 6.

³⁷ *CCR: Edward I, 1: 1272–1279*, 500, 540; *CPR: Edward I, 1: 1272–1281*, 328 (22 October 1279). See also: Kew, TNA PRO, C 60/73, membr. 3, Kew, TNA PRO, CP 40/24, membr. 61 and Kew, TNA PRO, CP 40/28, membr. 63.

³⁸ Richard's heirs were Margery and her husband Philip le Lou, Amici and her husband John le Lou, and John Pecche. Yes, it seems that the sisters had married brothers or cousins. A summary of the case is found in *CIM, 1: 1219–1307*, no. 1762, pp. 487–88.

For example: Ralph Clendon 'is and has been from his birth an idiot (*idiot*) incapable of managing his affairs. [His lands] shall remain in the king's hand for that cause, rendering 40*d.* yearly at the Exchequer by equal portions at Michaelmas and Easter; provided that [the guardian] keep the premises without waste and destructions, and find fit sustenance for the said Ralph'.³⁹ Ralph's lands brought income to the crown that was deposited directly at the Exchequer twice a year. The same was true of the lands of William Holm, 'who was born an idiot' (*idiot*). His lands were 'taken into the king's hands under Richard II and are still so held. They are held of the king in chief by a yearly rent of 1*d.*; annual value 5 marks'.⁴⁰ Mentally incapacitated individuals born in their condition served the king through their land's income since those lands 'ought to belong to the king'⁴¹ and the guardian was to 'answer at the Exchequer for the issues thereof'.⁴² The king used the inheritances of the mentally incompetent from birth as income for the crown.

The king could not always find a suitable relative to act as guardian and had to settle for a close family friend, a feudal lord, or some other individual the king found deserving of the income from the guardianship. In land disputes where matters were unclear, the king first claimed control over the property and person in question and then called a commission to figure out the precise details. It was at these times that the king appointed many of the non-familial, non-feudal guardians; escheators, clerks, sheriffs, and others became temporary guardians over lands in which the inheritance or the mental status of a person was contended.

Inheritances that were sizable often required more than one guardian, or could be divided among more than one guardian if the king chose to do so. These large holdings provided the perfect opportunity to have family members and the king's chosen guardians all involved. If a mentally incapacitated person inherited a large estate, often this indicated that this person was the focal point of the wealth of several families and that several holdings may have been brought together. In this event, the king then had to consider many factors and

³⁹ Kew, TNA PRO, C 60/159, membr. 12 and *CFR*, VII: *Edward III, 1356–1369* (1923), 68.

⁴⁰ Kew, TNA PRO, C 137/21, membr. 7, *CIPM*, XVIII: *1–6 Henry IV*, ed. by Kirby (1987), no. 345, p. 110. See also Kew, TNA PRO, C 136/5, membr. 4.

⁴¹ For example see: John de Panes, *CIPM*, XI: *35–38 Edward III* (1935), no. 405, p. 319; Ralph de Punchard, *CIPM*, XVIII: *1–6 Henry IV*, no. 537, p. 179; Hugh Groos, *CIM*, IV: *1377–1388*, no. 210, p. 116.

⁴² For example see: John de Lyndhurst, *CFR*, V: *Edward III, 1337–1347* (1915), 338.

families in placing a guardian and he had more people from which to choose. A good illustration of this phenomenon is the young, mentally incapacitated Walerand nephews whose lands had at least five guardians.⁴³ Another example was Robert Fitz Neel, an *idiot*, who had a group of guardians to assist with the care of Robert and his family and estate, which was large.⁴⁴

Managing landlords with mental incapacity generally gave the crown more authority in the land. Albeit only for the lifetime of the ward, it also gave the king additional control over properties in which he normally only had negligible power since it was he who chose the guardian, and he could replace the guardian if that person in any way did not live up to the contract with the crown. If a family stood somewhat hostile to the king, he could choose a guardian that was at least nominally supportive of his affairs, even if that person was a lesser or quite distant relative or neighbour.⁴⁵ These actions strengthened the lesser relative's or neighbour's tie to the crown, gave him an income, and for a time secured someone loyal to the crown in a family once hostile to the royal family.

Choice of Guardian

The king and his officials seem to have allowed many mothers to continue as the custodians of their mentally incapacitated children even after those children became adults, though a few mothers were rejected as guardians because of advanced age or illness.⁴⁶ For example, Bartholomew Sakevill was under the care of his mother, Matilda, for many years after a blow to the head and subsequent fever. When she grew too old to keep up with his many properties in England and Ireland, a temporary guardian 'for two years' was given

⁴³ The young Robert had John de Mauro (*CPR: Edward I*, I: 1272–1281, 86) and John de Britannia (*CPR: Edward I*, III: 1281–1292, 4) as his guardians and John had Alan Plunknet (*CPR: Edward I*, III: 1281–1292, 462), Adam de Herwynton (*CPR: Edward I*, IV: 1301–1307 (1898), 155), and Robert Payne (*CCR: Edward II*, I: 1307–1313, 33–34). See Chapter 2.

⁴⁴ Kew, TNA PRO, C 60/151, membr. 20 and *CFR*, VI: *Edward III*, 1347–1356 (1921), 252. See also: Kew, TNA PRO, C 60/155, membr. 8 and membr. 10 where Robert was referred to as *non compos mentis sue*.

⁴⁵ In 1374, William Mortimer, son of Henry Mortimer 'and Kinsman and heir of Hugh Mortymer' was *idiot*. Edward III granted some of the Mortimer estate to his usher of the receipt of the Exchequer, John Ederyk, but Edward also granted some to Hugh Mortimer, William's brother who later inherited in 1392. *CIM*, III: 1348–1377, no. 949, p. 359; *CPR: Edward III*, XVI: 1374–1377, 15; *CFR*, XI: *Richard II*, 1391–1399, 39.

⁴⁶ Turner, 'Angry Wives of Madmen'.

to Bartholomew to help out his mother.⁴⁷ If the mentally incompetent land-lord's mother was dead or rejected and if he had no family members other than those in line to inherit or those not trusted, the king granted the guardianship to someone in his favour. Only in unusual circumstances did the king deviate from this normal procedure of rewarding guardianships or from granting inheritances.

Most often a member of the family was chosen as guardian. This gave the king's protection to the ward and his properties while simultaneously leaving him in the custody of family. This also allowed the family some control of and a little income from the lands of their relative and protected the king's interests at the same time. The guardian provided care for the mentally incapacitated landholder out of the income from the land, not leaving him a burden on his community or family. When a family member controlled the property, the fees and rents from the lands benefited the crown and the landholder's family members while leaving the inheritance intact for the landholder upon his recovery or for his heirs should he not recover. When allowing a guardianship to be placed with a family member of a ward, the king used caution in his choice, not allowing those who might inherit from the ward to act as guardians over a mentally incapacitated person for fear that an heir might murder the ward in order to inherit early.⁴⁸ The king's caution also protected the person who would inherit from the mentally incapacitated ward since, if the ward died in his care, questions could arise concerning his role, as guardian and heir, in his ward's death.

Marriage

Some mentally incapacitated persons, such as Robert Gregory, John Gerard, Alice Gaudi, and the former Earl of Derby,⁴⁹ were married with children. These individuals had married during a period of sanity or before becoming mentally incapacitated. Most incapacitated persons who had no periods of lucidity were unmarried, since they were barred from taking vows of any kind. An individual was supposed to have at least one lucid moment in which he could take the vow

⁴⁷ CPR: *Edward I*, III: 1281–1292, 361–62.

⁴⁸ For more on guardians, see Chapter 8 below.

⁴⁹ Robert Gregory, *Close Rolls: Henry III*, VII: 1251–1253, 32; John Gerard, *Close Rolls: Henry III*, VII: 1251–1253, 177; Alice Gaudi, *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 237, p. 105; and William de la Ferers, Earl of Derby, *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. by Clanchy, no. 541, p. 231. For information on all of these people, see Chapter 5.

of marriage in his right mind. There were, though, a few instances of marriages involving mentally incapacitated persons without lucid periods. Marriage withstood most legal challenges with few exceptions once consummated, whether the participants were sane or not.

Supposedly a person born mentally deficient without any periods of sanity could not marry, yet some did. Many of these contracts had been arranged so that the spouse could take the profit from the land rather than giving it to the king, as in the case of Emma Beston.⁵⁰ Clearly she was mentally incapable at the time of the inquisition and had been married under questionable circumstances three times. The only requirement by both the state and the church was that a person be able to answer, 'I do', to the question of marriage in the present tense while in control of their mental faculties in front of witnesses. Nevertheless, even if the spouse and witnesses had lied in order to gain a valid marriage contract, rarely did the administration suggest that such a marriage be annulled or invalidated. A mentally incapacitated person who did not have lucid intervals, could not marry nor engage in any of these activities; however, if a person had already been married prior to becoming mentally incapacitated or prior to the notice of the crown, then his marriage continued to be binding and valid.

Boroughs

In cities that held their own charters, the treatment of a mentally incapacitated person could be quite different. In Bristol in 1344, if someone became mentally incapacitated, the mayor would confiscate the person's property and 'deliver' it to 'the next of kin to be kept until they are [he is] restored to sanity'.⁵¹ Much like the older twelfth- and early thirteenth-century feudal custom, the 'next of kin must provide a guardian' for the mentally incapacitated person. The guardian was to protect the mentally incapacitated person from physical as well as financial harm.⁵² The cities with charters were outside of feudal legal system, and the king and his officials did not interfere with these privileges as long as the cities paid their taxes and tariffs and remained loyal to the crown. The laws concerning the mentally incapacitated in cities tended to be different from one city to the next and from the general laws of the feudal countryside.⁵³

⁵⁰ See Chapter 3.

⁵¹ *Borough Customs*, ed. by Bateson, II, 150.

⁵² *Borough Customs*, ed. by Bateson, II, 150.

⁵³ Turner, 'Town and Country'.

Parents could write wills leaving property to another child, rather than allowing it to descend in a standard fashion to the first born, especially if the first child was born mentally incapacitated or impaired.⁵⁴ If there was not a will, in many places the mayor⁵⁵ or burgess of a town or borough became the guardian of an heir. He could re-grant the property to another to guard over, but in several cases the burgess had the *idiot* in his own home and took the profit of the property for himself.⁵⁶

Extension of Royal Wardship to English Holdings Outside England

The laws governing English feudal holdings in lands outside England were also treated differently than feudal holdings in England. Questions arose under Edward I and Edward III as to how English royal wardship of the mentally incapacitated would apply to English lands in other places. Would they fall to the king as they did in England? Ralph, the son of Ralph de Lasceles and 'an idiot' (*ydiota*), inherited his father's property in Scotland in 1305. The king and parliament sent word to 'the king's lieutenant in Scotland and the chamberlain [who] are to be ordered to enquire into the laws and customs of Scotland in this case, and to inform the king'.⁵⁷ The king decided to place the lands in wardship with William Vavassour, who guarded the rights of the family over those of the lord.⁵⁸ Ralph's brother, Gilbert, took his claim before Edward I's Lent parliament hoping to gain custody.⁵⁹ Gilbert's request was followed by a request from Ralph's lord, John, the earl of Buchan. The earl asked to have Ralph's wardship, since in John's estimation the laws in Scotland plainly gave lords more rights over their vassals.⁶⁰ In this circumstance, the king had favoured the law of England for the English family rather than that of Scotland.

⁵⁴ Kermade, *Medieval Merchants*, pp. 117–18; and Virgoe, 'Inheritance and Litigation'.

⁵⁵ *Borough Customs*, ed. by Bateson, II, 155 n. 3, see also, pp. 156–57.

⁵⁶ *Borough Customs*, ed. by Bateson, II, 150.

⁵⁷ Kew, TNA PRO, C 47/22/9, no. 126; Kew, TNA PRO, C 66/125, membr. 14; Kew, TNA PRO, SC 8/10, no. 454; and Kew, TNA PRO, SC 8/10, no. 456.

⁵⁸ 'Appendix to Roll 12', ed. by Paul Brand, in *PROME*, ed. by Given-Wilson and others, items 419, 427 (VII, 225). For more on this case, see Kew, TNA PRO, C 47/22/9, no. 126; C 66/125, membr. 14; SC 8/10, nos 454 and 456.

⁵⁹ 'Edward I: Parliament of Autumn 1305', ed. by Paul Brand, in *PROME*, ed. by Given-Wilson and others, item 419 (390), (VII, 225).

⁶⁰ 'Edward I: Parliament of Autumn 1305', ed. by Brand, in *PROME*, ed. by Given-Wilson

Edward III extended the protection of wardship to the mentally incapacitated in all of England's holdings including those in Wales, Scotland, and Ireland. However, the English system could be set aside when convenient since the holdings were not in England proper. One example of this practice occurred when Maurice Fitz Thomas of Ireland died in 1359. His eldest son, Nicholas, inherited and was found an 'idiot' (*idiocie Nichi[las]*).⁶¹ The lands came into the hands of Edward III because of Nicholas's condition, and his younger brother and heir, Maurice, was given the wardship. Maurice died shortly thereafter. The king decided that Gerald, the next heir and youngest brother, 'in consideration of the probity, sense and virtues which flourish in [him]' would be given the inheritance as long as he provided care for Nicholas, his older brother.⁶² Gerald, now the earl of Desmond, was also given the hand in marriage of the eldest daughter of his neighbour, James Botiller, Earl of Ormond, the justiciary of Ireland. Gerald, of course, agreed to care for Nicholas finding him 'food, raiment and other necessities'.

The king decided in favour of Gerald for several reasons. The father of Gerald and Nicholas, Maurice Fitz Thomas, Earl of Desmond,⁶³ had several times run into trouble with those serving the king of England in Ireland. In 1346, the justice gave the king's pardon to all those who had been in rebellion with the exception of Maurice, the earl of Desmond, Thomas Fitz Johan *le neveu*, and Walter Maundevill.⁶⁴ Maurice was arrested and brought before the king in England; his lands were placed into care of some of Edward III's

and others, 427 (397) (VII, 228).

⁶¹ Kew, TNA PRO, C 66/257, membr. 19.

⁶² Interestingly, Ralph, earl of Stafford again controlled the estates while they were in the king's hand. *CPR: Edward III*, XI: 1358–1361, 246 (20 July 1359).

⁶³ The two names Maurice Fitz Thomas, earl of Desmond and Maurice Fitz Thomas, earl of Kildare can be confusing but they are not the same person. While Desmond was pursued and arrested by the king, Kildare was pardoned 'for his good service'; *CPR: Edward III*, VIII: 1348–1350, 56 (18 April 1348). The earl of Kildare, whose descendent would work closely with Desmond's heir, appears in most of the following entries concerning the certain family of Walter and Elizabeth Barby and John Barby, chaplain, but in a few of these entries, just like Desmond, he is pardoned for crimes against the king, or given leave for some matter or other; *CPR: Edward III*, VII: 1345–1348 (1903), 447 (2 January 1348); and XIII: 1364–1367, 85 (25 April 1348); XIV: 1367–1370 (1913), 21 (18 December 1350), 494 (6 October 1353) and 495 (6 October 1353).

⁶⁴ McKisack, *The Fourteenth Century*, p. 231, and *CPR: Edward III*, VII: 1345–1348, 119 (12 May 1346).

men.⁶⁵ In 1350, the king pardoned Maurice and Walter, restoring their lands,⁶⁶ and Maurice gained a writ of protection to leave for Ireland that same day and see personally to his estates. He was forced to leave his two sons in England to ensure his good conduct.⁶⁷ The records only mention two boys; these seem to have been Maurice and Gerald. Nicholas, the earl of Desmond's mentally incapacitated eldest son, was probably at home in the care of his mother or nurse. Upon returning to Ireland, the earl found his manors and castles ruined. A few men were arrested but much damage had been done:

[I]n the time when these were in the king's hands for certain causes, ['evildoers of Ireland'] broke the houses, gates, doors and windows of those castles and manors, and carried away and had their will of the goods in the same castles, manors and lands, and others who occupied the same, took for their own use the issues and profits thereof, and did not answer to the king for these.⁶⁸

Maurice did receive respite for several years running in consideration of his losses, since they were in the king's hands at the time they were destroyed.⁶⁹ Nearly ten years later, Edward was no longer a young man and needed peace in Ireland. Edward could use someone he knew and trusted in Ireland, and Gerald had spent time with Edward in London. Edward gave Gerald an inheritance he never expected, which in effect 'bought' his loyalty. On this occasion, it suited the king's purposes to have Gerald inherit instead of his mentally incapacitated

⁶⁵ For information on Stafford and Talbot, the men who had custody of the castles of Maurice while he was in England, see: *CPR: Edward III*, VIII: 1348–1350, 144 (2 Septemer 1348), 246 (26 November 1348), and 320 (4 May 1349) especially. For the arrest of Maurice and his fate and that of his followers see: *CPR: Edward III*, VIII: 1348–1350, 129 (15 July 1348); 121 (17 July 1348); 19 (15 February 1348); 432 (16 December 1349); 503 (13 May 1350); and *CPR: Edward III*, VII: 1345–1348, 446–47 (28 June 1346).

⁶⁶ *CPR: Edward III*, VIII: 1348–1350, 508 (20 May 1350). See also p. 434 (28 November 1350) where he was re-granted all of his estates, etc., but his two sons were compelled to stay in England.

⁶⁷ *CPR: Edward III*, VIII: 1348–1350, 502 (20 May 1350).

⁶⁸ *CPR: Edward III*, IX: 1350–1354, 84 (30 March 1351); and also p. 161 (26 July 1351), p. 164 (18 August 1351).

⁶⁹ *CPR: Edward III*, IX: 1350–1354, 136, 134 (16 September 1351), 357 (1 October 1352), 529 (18 December 1353). The following year, Eleanor, the countess of Ormond, named Maurice as one of her attorneys in Ireland while she stayed in England in 1351. *CPR: Edward III*, IX: 1350–1354, 147 (28 September 1351). Ormond and Desmond lived in the same vicinity. For her to name Maurice, earl of the land touching her own as well as the newly forgiven enemy of the king, as her attorney, demonstrated a certain amount of trust between the families.

older brother, which was a situation that had the potential of becoming unstable. Because of his condition and location, Nicholas could easily be overlooked in favour of his brother, if his brother would be Edward's man. Gerald as the earl of Desmond was later counted among the greatest barons of Ireland along with the earl of Kildare, while Nicholas disappeared from the records. The disinheriting of Nicholas could not have happened legally in England. Much like the treatment of Ralph Lasceles of Scotland,⁷⁰ these cases demonstrate one of the legal and social differences between the English holdings in other places, such as Ireland, Scotland, Wales, and Normandy, and the holdings in England itself.

* * *

Whether referred to as *idiotia*, *fatuus*, *non compos mentis*, *lunaticus*, *non intellectum habens*, or in some other fashion, the crown claimed jurisdiction over the lands and person of all of the mentally incompetent who had inherited property. Royal officials needed to make clear that the individual in question could not competently or responsibly hold property and that the king's rights in his lands and rents were placed in the care of a guardian. The officials also needed to know whether or not former contracts should be made invalid. For instance, someone described as an *idiotia* would have to be mentally incapable of undertaking the responsibilities associated with being a landholder. For that reason the king provided a guardian — another person with a capable mind — who could take responsibility for the land.

The administration of the custody of the lands of the mentally incapacitated began with the decision of whether or not an individual was indeed mentally incapacitated and if he had property. These persons were in custody because of their property and their inability to care for that property, and not because of their particular mental condition. As a royal ward, he would be given a guardian who normally could not be his heir. Just as with any wardship, the guardian had to maintain and protect the property; he could take some profit out of the land,⁷¹ but could not bring down its overall value by selling off movable property, alienating portions of the land, or neglecting the estate. With minors, their wardships ended when they came of age, with women, when they married. Unique to the situation of the mentally incapacitated, his wardship did

⁷⁰ Kew, TNA PRO, SC 8/10, membranes 454, 456, etc. The earl of Buchan, John Comyn, retained his rights in the lands as Ralph's lord.

⁷¹ With some exceptions for those with intermittent sanity or recently acquired mental disabilities; see Chapter 7.

not have a stipulated time limit. Wardships of the mentally incapacitated varied and did not end when they came of age or when they married. Instead, these wardships were for the duration of the periods in which they remained feeble, which meant that a wardship could end with the death of the individual (as it would have in the other two types of wardship as well), or continue until he recovered, which a few did. Some, because of the intermittent nature of their particular ailment, became wards several times throughout their lives, living independently during their periods of recovery.

ROYAL PREROGATIVE WARDSHIP

[A]s lately upon information received that the said Joan was an idiot (*idiotia*) from birth (*a nativitate*), and by fines so levied and otherwise aliened divers lands of her heritage, the king caused her to come before the council to be examined as an idiot, and being examined it seemed to the council that she is an idiot and thereby may not have governance of herself; and the king is aware that, if by due process she shall be adjudged an idiot, alienations by her made will be of no worth, that the wardship of the lands of her heritage pertains to the king during her life, and that after her death the king is bound to restore the same wholly to her heir.¹

Henry III needed as much disposable income as possible. His all-out battles with the barons as well as his troubled attempts to have his son crowned king of Sicily had left the coffers low.² He owed his loyal nobles repayment for loans and rewards for their assistance and over-indulgence of his needs. Some of this money came from estates forfeited by the barons who had opposed him. Some came from wardships and marriages of the wives and underage heirs of those slain in the battles, but more money was needed, ongoing money.³ The wardship as payment worked well: the king did not have to have cash up front, and someone did need to ‘keep’ the lands of the wards in good order.⁴ The income each estate generated was often more than enough to keep

¹ Kew, TNA PRO, C 54/212/membr. 29 (top). See also: *CCR: Edward III*, xiv: 1374–1377 (1913), 4 (1 February 1374).

² Powicke, *The Thirteenth Century*, pp. 120–28.

³ Waugh, *The Lordship of England*, pp. 207–21, and Waugh, ‘From Tenure to Contract’.

⁴ For more information on the connection between lordship and wardship, see chap. 4 of Turner, ‘Afflicted with Insanity’; Waugh, ‘Marriage, Class, and Royal Lordship in England’.

the land in good order, provide for the ward and a stipend for the guardian.⁵ For example, the guardian of Ralph Clendon had to care for Ralph and his lands, and produce 40*d.* each year, making payments at Michaelmas and Easter at the Exchequer.⁶ Excess in the case of someone born in their condition went to the king; excess in the lands of those who became mentally incapacitated were held for the eventual recovery of the landlord. The *Prerogativa regis* provided for such expenses. In both scenarios, the lands were to be returned to the recovered landholder or his heir undamaged as expressed in the opening quote.

By the first quarter of the fourteenth century, if a mentally incapacitated heir came to the attention of the Exchequer, a series of regular actions would be set in motion. The exchequer sent a writ of inquiry (*certiorari*) to the escheator in that area. If an individual's mental state were determined to be unhealthy by the escheator, he might well assign temporary guardians for the person and his lands on the spot informing the exchequer of his actions. If the mental state of the person were questionable, the escheator sent him to be examined before the king's council. After confirming his status as a mentally incapacitated person, all of his transactions would be considered null and void. All properties of the landholder, both those he had possession of and those he had previously alienated while incapacitated, would be taken into the hands of the king and a guardian appointed to the mentally incapacitated person.

The King's Hand

The *Prerogativa regis* said that the king was not to take any of the profits of the lands of mentally incapacitated persons (*non compotes mentis*) 'for his own benefit'.⁷ It should be pointed out that unless there was some benefit to the system, the nobility would not have voluntarily taken on wardships, and the king would not have bothered with them. As with those born feeble-minded, under certain circumstances the crown did use the income — though often indirectly — for its own purposes from lands of those who became *non compos mentis*. Upon occasion the crown took the income directly, especially if no heir

pp. 201–07; Walker, 'Violence and the Exercise of Feudal Guardianship'; and Menuge, *Medieval English Wardship in Romance and Law*, esp. pp. 4–7.

⁵ Turner, 'Mental Incapacity and Financing War'.

⁶ CFR, VII: *Edward III, 1356–1369*, 68; Kew, TNA PRO, C 60/159, membr. 12.

⁷ And often the king did not take any profit out of the land — as in 1275 with Lucy de Meinill's lands. She was described as *non compos mentis*. CPR: *Edward I, 1: 1272–1281*, 106.

were apparent,⁸ there had been damage done to devalue the estate (in which case the crown was attempting to repair the value),⁹ or the individual had been mentally incapacitated for a decade or more.¹⁰

The crown claimed all profit from the lands of the mentally incapacitated as its entitlement. If the land was worth more than what the king owed the guardian to whom it had been granted, the guardian owed the excess rent back to the king. By claiming the wardships of the mentally incapacitated, Henry had found another source of income with which to pay his staff and to occasionally invest his nobles. A mentally incapacitated person could live years and most of the time his wardship lasted his lifetime, potentially much longer than female or underage wardship. For instance, John de Mauro gained part of the Walerand wardship at an annuity of 20*l.* out of the lands of the Boterels held by the abbot and convent of Jervaulx who were bound to the king.¹¹ John was

⁸ As in the case of Joan Praeus above, whose heir was a minor. *CPR: Henry III*, vi: 1266–1272, 109.

⁹ This happened more later on in the fifteenth century. For example, in 1437 William Whappelode gained custody of William Dunton of Chalfhunte with the stipulation that he pay to the Exchequer 40*s.* each year. The crown made a provision that ‘if any other person shall be willing without fraud to give more by way of increment for the said keeping, then the said William Whappelode shall be bound to pay such larger sum’ if he wanted to continue in the position of guardian. The crown was trying to get the land value up and was basically giving incentives to do so. *CFR*, xvi: *Henry VI, 1430–1437* (1936), 317. In another example, John Bertelot, an *idiot*a, sold off some land to the chaplain of St Albans. The inquisitor realized this was a problem and seized the alienated property into the king’s hand, but the chaplain sneaked over and ‘knocked down, took and carried off [...] to the king’s annual loss of 10*s.*, a building made for John Bertelot worth 30*s.*’. *CIPM*, xviii: 1–6 *Henry IV*, no. 1186, pp. 409–10. See also Turner, ‘Mental Incapacity and Financing War’.

¹⁰ For examples, see Roger (de) Bachesworth (*fatuus*), 1310, *CCR: Edward II*, i: 1307–1313, 209, and William de Passenham (*non compos*) 1278, *CIPM*, ii: 1–19 *Edward I*, no. 279, p. 159. In other places both of these men were called *idiot*a, yet that term was *not* only used for those born with incompetence, but also for those who became incompetent later. For example, John atte Berton, called an *idiot*a, had become so and remained in that condition for sixteen years, but he had — by his own testimony — not been mentally disabled from birth, but at the time of his father’s death (the year before the Black Death) he suffered a ‘fright’ (becoming *depressus*) and had no memory for three years. He recovered and had now been trying to get into court for at least five years, but was stopped by his guardian. The king was skimming money out of his land as was the guardian, who had to pay the crown at Michaelmas and Easter. See esp. Kew, TNA PRO, C 60/145, membr. 30–(cancelled); *CFR*, v: *Edward III, 1337–1347*, 410–11; and also Kew, TNA PRO, C 66/242, membr. 7.

¹¹ *CPR: Edward I*, i: 1272–1281, 86 (5 May 1275), 304 (5 March 1279), and *CPR: Edward I*, iv: 1301–1307, 492 (6 February 1307).

to keep the land as long as young Robert Walerand continued in his condition; John held this portion of the estate for thirty-two years at which time he died, and the king granted the wardship to another guardian, John de Britannia.¹² The king had owed Mauro 20*l.* per year and by giving him the wardship worth that much money, the king kept from draining yet more money from the Exchequer and he also had someone to manage the Boterels holding. In some cases, a guardian would be owed a set amount and was paid in full long before the wardship ended; the wardship would then either generate revenue for the crown or be granted to another individual whom the crown owed payment. In other cases, the guardian was a relative of the mentally incapacitated individual and not owed any money from the crown. The relative kept the land in production, which was generally good for the country. If the estate was small, the majority of the income would probably be used to find ‘maintenance’ — meaning a caregiver, food, and clothing for the mentally incapacitated individual — and to ‘find sustenance’ for family members and upkeep for the property. Any small amount of profit left, the guardian was free to keep for his trouble. The same was true on larger estates; however, the expenses would have been higher for both ‘maintenance’ and ‘sustenance’ and because of the added responsibility of keeping any duties associated with the land (for example, knight’s service), the guardian could again keep the profit from the land. These wardships did not always generate revenue directly for the king, but they did keep the land in production, keep the land from ruin, and place a competent individual in a position to meet service agreements. If after all of the normal expenses were paid there was excess income, the king claimed the profit.

The administrative and court records make it clear that the crown kept the profit from the lands of mentally incapacitated persons.¹³ Does that invalidate chapter twelve of the *Prerogativa regis*? Perhaps the author of the *Prerogativa regis* wanted to stipulate that the king was not to use the income from these lands for his personal use and that uses for the expenses of the crown were permissible. The passage could be wrong or things could have changed, even in a short period of time; in either case, the fact of the matter is that the crown did claim any income beyond the expenses to keep up the property and care for the mentally incompetent individual and his family. Yet, the crown did not push the issue if the person was elderly, and had family to take care of the estate and serve as guardian over the individual. For instance, William Eyot’s lands were

¹² See esp. *CPR: Edward I*, 1: 1272–1281, 86; and 1v: 1301–1307, 492.

¹³ See n. 10 above.

in the custody of the king who granted them to Robert Elbrugg 'without rendering anything to the king' while finding 'competent sustenance for the idiot [out] of the issues of the premises'.¹⁴ According to the *Prerogativa regis* and echoed in passages such as this, the king was not to take the excess income out of the lands of those who *recently* had become mentally incapacitated, which he seems to have honoured. The king, though, also refrained from claiming the income out of lands of mentally incapacitated persons with a history of intermittent conditions, probably because they too would be in and out of wardship wanting their lands returned upon sanity to which they as landholders had a right.

The exclusion for those who became incompetent may have been created because of the uncertain mental condition of these persons. Each had once had his sanity, which might return and he would then need the income to support a family. Many had families because their conditions were periodic and their 'sustenance' was logically more expensive. For example: John Heton 'after completing his twenty-fourth year has become a fool and an idiot' (*fatuus et idiota*), the king placed his lands under the protection of three members of the family provided that they 'keep the lands without waste, find sustenance for him, his wife, children, and household, and answer for the residue of his goods and the issues of his lands pursuant to the statute'.¹⁵ The 'statute' referred to here was most likely the *Prerogativa regis*, which in chapter twelve had made special provisions for those who became mentally incapacitated later in life.¹⁶ This same type of custody was provided for Robert Fitz Neel, 'an idiot' (*idiota*) whose lands came into the hands of the king when Robert became mentally incapacitated. His lands were also placed in the care of a group of guardians who were to 'find fit sustenance for Robert, his sons, daughters and domestic servants, and answer for the remainder of the issues'.¹⁷ Robert had a group of guardians because his land holdings were extensive. The crown protected even minor heirs of the gentry who had lands and families from degradation and loss of income as mentally feeble landlords.

¹⁴ CPR: Edward III, XIII: 1364–1367, 354.

¹⁵ Kew, TNA PRO, C 66/245, membr. 13; CPR: Edward III, x: 1354–1358, 200–01.

¹⁶ See Chapter 2 for more information on the *Prerogativa regis*.

¹⁷ Kew, TNA PRO, C 60/151, membr. 20 and CFR, VI: Edward III, 1347–1356, 252. See also: Kew, TNA PRO, C 60/155, membranes 10 and 8 where Robert was referred to as *non compos mentis sue*.

Some of the king's staff had several wardships. The king gave Hugh son of Otto, the steward of the king's household 'for his praiseworthy service, 50*l.* yearly of land from wardships',¹⁸ not one ward, but multiple wards. Hugh became the guardian of William de Passenham, 'who was not of sound mind', and of the daughter of John la Veille along with her marriage. If this did not add up to an annum of 50*l.*, the king's steward, Richard de Holebrok, was to find the rest of the 50*l.* out of other 'custodies or wardships' that he, Richard, held. Eventually, Hugh son of Otto also received some lands from a felon.¹⁹ He was granted the manors of Hamerton in the county of Huntington and Beuchamp Parva in the county of Essex of his nieces, Joan, Matilda, and Beatrice, along with their marriages.²⁰ Hugh married Joan to Guy Ferre, another guardian who held many wards and lands including the manor of Renham part of the mentally incapacitated Robert Walerand's estate.²¹ The interconnectivity of lordships is evident in the ever-widening circles of wardships and marriages.²² For example, in 1275 Robert de Tibotot had one of the first wardships from the king, that of the mentally incapacitated woman Lucy de Meinill 'who was *non compos*'.²³ Tibotot became the guardian of several other persons; at the request of the queen in 1285, Tibotot held in wardship one of the heirs of Hugh son of Otto, mentioned above.²⁴ The interlocking of families did not stop with marriages; it continued through this system of wardships, tying the lords of England one to another with fees, payments, and duties associated with land. Multiple wardships were not uncommon and were a convenient way for the king to both pay debts and care for land simultaneously.

¹⁸ *CCR: Edward I*, i: 1272–1279, 538 (21 August 1279). See also: *CPR: Edward I*, III: 1281–1292, 280.

¹⁹ A small collection of lands from a 'felonus Jew', *CCR: Edward I*, II: 1279–1288, 4 and *CPR: Edward I*, i: 1272–1281, 357 (1278).

²⁰ He received the minority of his brother Thomas's children, some of the estate of which came from the dower lands of their mother Beatrix, deceased. Thomas's children were Joan, Matilda, and Beatrice. As part of his payment, Hugh was granted the fees from their marriages. *CPR: Edward I*, i: 1272–1281, 449 and *CCR: Edward I*, II: 1279–1288, 21.

²¹ *CPR: Edward I*, III: 1281–1292, 413.

²² Waugh, *The Lordship of England*, pp. 15–63.

²³ *CPR: Edward I*, i: 1272–1281, 106. See also *CFR*, i: *Edward I*, 1272–1307, 335: 'Lucy de Branceston [...] idiocy'.

²⁴ *CPR: Edward I*, III: 1281–1292, 416.

The King as Landlord

The king in his capacity as a landlord, granted early wardships of mentally incapacitated persons as a landlord rather than king, meaning the lands were held directly from the king. Following the end of baronial dispute, Henry III granted, 'for certain causes [...] Robert Walerand the wardship of the forest of Bere and Asseleye and other lands belonging to Joan de Praeus who is *non compos mentis*.'²⁵ This was not the first time a guardian was not a family member, but this practice became more common late in the thirteenth century. Joan had two guardians that were not family, probably because she had no family.²⁶ In this instance, the bailiwicks of Joan were held in chief of the king, and yet the records also note that she was mentally incapacitated. King Henry III placed Joan de Praeus (or Pratellis) and her property in the hands of an experienced guardian, Robert Walerand, who was a judge and a friend of the king, someone who had previously held many wardships of minors and women. After the death of Walerand in 1273, Joan's lands were transferred to Payn de Cadurcis, another trusted servant of the king.²⁷

Two more wardships of mentally incapacitated landlords that held from the king followed that of Joan within the year, those of Thomas de Solariis and Geoffrey Luterel. The guardianship of Thomas de Solariis was granted to the king's clerk, Master Godfrey Giffard in 1266 after the king heard testimony that Thomas was *non compos mentis*. The recorder did not use the term 'custodian', 'guardian', 'tutor', or 'curator'; instead, he simply said that there was a 'commitment' to Giffard 'of the said Thomas and his lands and goods'.²⁸ The wording still clearly implied a ward-guardian type of relationship. Another person 'of unsound mind', Geoffrey Luterel, was a father and husband who became a ward of the king in 1266.²⁹ The king assigned Alexander Luterel, Geoffrey's

²⁵ *CPR: Henry III*, v: 1258–1266, 458. See also: vi: 1266–1272, 109 (16 September 1267).

²⁶ Joan had two guardians, one after the other: Robert Walerand, *CPR: Henry III*, v: 1258–1266, 458; and Payn de Cadurcis, *CPR: Edward I*, i: 1272–1281, 30.

²⁷ 'Payn de Cadurcis to the custody of the lands of Joan de Praeus, an idiot, in the manor of Hasshele with the bailiwick of the forestry of la Bere, so that he maintain her fittingly'; *CPR: Edward I*, i: 1272–1281, 30 (24 October 1273).

²⁸ Thomas held part of an ancestral barony of the king in chief in the county of Hereford; *CPR: Henry III*, vi: 1266–1272, 96 (1267).

²⁹ Geoffrey held some, though not all his lands, in chief of the king. He held Ineham manor of the king in chief by barony in the county of Lincoln. *CIPM*, i: *Henry III* (1904), no. 604, p. 192. See also *CIPM*, i: *Henry III*, no. 611, p. 195.

brother, sole custody of Geoffrey. His lands were to be in the joint custody of Alexander and William de Grey, Geoffrey's father-in-law. Alexander was to use some of the profit to care for Geoffrey. William was to use some of the profit to care for Geoffrey's children. The excess profit was to be held for the marriage of the children.³⁰ When William de Grey died, the king at first gave Alexander Luterel the added responsibility over the children; but by 1269, it became obvious that Alexander had 'not exercised his office satisfactorily'.³¹ He may have been older and could not keep up any longer. The king, therefore, made Alexander's son, Robert Luterel, the guardian of his uncle Geoffrey and his land. The king gave Richard de Grey, son of William and maternal uncle to the children, the responsibility for the children's care.³² The king gave guardianships to his trusted friends and relatives of the ward. In all three illustrations, the concern of the king and court was first and foremost for the proper care of the land, not the mentally incapacitated ward.

Avoiding Wardship

Some mentally incompetent individuals were involved in non-violent crime, including both felonious and non-felonious misdemeanours. There were many such persons involved in the making of illegal contracts, such as selling or 'alienating' property while mentally incapacitated, or evading royal laws. The persons most often attempting to evade royal wardship were of those who had lucid moments. Wardship took a financial toll on the lands and family of a mentally incapacitated landholder.³³ It was expensive to pay the court to regain lands once in wardship, and persons with recurring episodes of sanity might go through the process multiple times. During wardship, an estate had money siphoned away from it, and it might incur outright damage as well. Besides those with

³⁰ *CPR: Henry III*, v: 1258–1266, 564.

³¹ *CPR: Henry III*, vi: 1266–1272, 392 (1269).

³² Kew, TNA PRO, C 66/88, membr. 27; and Kew, TNA PRO, C 66/84, membr. 25.

³³ Matthew le Pakkere gave to his two children, John de la Codereye and Maud, a messuage called 'la Ropselde' in Bristol. When John became a 'lunatic', the constable of Bristol Castle ejected his sister. 'She obtained a writ to the said Nicholas [the constable] to inquire as to her right, [but] [...] did not prosecute on account of her poverty'. The king later stepped in and ordered the 'lunatic' released from the castle prison and the messuage returned to the family and the constable was 'not to intermeddle further'. Kew, TNA PRO, C 145/69, no. 17; Kew, TNA PRO, C 54/129, membr. 22; *CCR: Edward II*, 1: 1307–1313, 382; and *CIM*, II: 1307–1349, no. 47, p. 13.

periodic mental incapacity, families might become involved in attempting to avoid the attention of royal officials as a wife, child, or other relative tried to hold onto the income from their the mentally incompetent relative's property — sometimes to the benefit of the family and at others to its detriment.³⁴

A mentally incapacitated ward could not legally alienate lands, and if he did, the crown would reverse those transactions. All lands of a ward were to be placed into the hands of the king who turned them over to a guardian. From the language used in the records, it was incredibly important within this society to keep an inheritance together.³⁵ Once a family trust had been lost, sold, or destroyed, it would be nearly impossible for the heir to rebuild. In an era in which land meant more than money, the loss of an inheritance determined that the heir would probably be impoverished, would not marry, and instead would work for someone with land. This reality might explain why a few mentally incapacitated persons with lucid intervals had attempted something akin to the royal system of wardship by setting up a type of trust, albeit with limited success.³⁶ Nevertheless, that they had such presence of mind during their often-limited lucid moments is fascinating. After the death of a mentally incapacitated ward, the king released the ward's property to his heirs, but only after royal officials had carefully investigated all claims of inheritance.

Alienating Land

Neither the mentally incapacitated heir nor his family or guardian could alienate land out of a mentally incapacitated heirs' estate unless he was sane at the time of the transaction. In 1352, Ralph de Bolmere who was 'not of sound memory (*non bone memorie*) [...] alienated a great quantity of land' that he held of the king in chief as well as a few others.³⁷ The king sent a commission of three men to 'survey the state of the said Ralph' and his holdings. The three, Walter de Faucomberge, Robert Bertreme, and Thomas de Wodebourn, found that Ralph was mentally incapacitated and took back all the lands that Ralph had sold 'without delay into the king's hands, and cause[d] them to be safely guarded until further order'. In this instance, the king took action swiftly when

³⁴ Turner, 'Angry Wives of Madmen'.

³⁵ Waugh, *The Lordship of England*, pp. 28–29.

³⁶ *Select Cases of Trespass from the King's Court*, ed. by Arnold, I, p. lii.

³⁷ Kew, TNA PRO, C 66/235, membr. 1d, and *CPR: Edward III, ix: 1350–1354*, 208 (23 January 1352).

Ralph began to whittle away his estate without being rational about his actions. The king, while protecting Ralph, protected his own lands in Ralph's holding.

Over the course of the fourteenth century, the investigators of the mentally incapacitated began to look into any suspicion that lands had been alienated as one part of their routine responsibilities. When an official discovered lands alienated from an estate, the escheator or commissioner was to decide if a given person was indeed mentally incapacitated, 'and if so whether from his birth or from what time, whether he had lucid intervals and whether he has alienated any lands.'³⁸ If the lands should not have been alienated, the authorities were to reclaim those lands and fine those who had taken them illegally. A file in the *Inquisitions post mortem* from 1383 in the reign of Richard II, provides a good example of this practice:

Writ of *plenius certiorari* to the escheator to ascertain whether the said John [de Bernacastell] is out of his mind (*non compos mentis sue*) or not, and, if so, to take into the king's hand and keep safely until further order all his lands, including any lands alienated by him since he went out of his mind.³⁹

The crown's official reclaimed the alienated lands from whomever held them at the moment as if in all cases the lands belonged in the hands of the mentally incapacitated heir; this might include the dower lands of a mother or lands sold while sane. The details of ownership, rights in or on the land, and fines or fees to be paid, and by whom, were all worked out later and lands returned when appropriate. In one unusual episode, the king requested that a guardian buy back the lands that *should* have belonged to a mentally incapacitated heir, Thomas de Panes, when it was found that Thomas's father had sold them off before he died:

Licence for Thomas Moigne [the guardian] to acquire in fee the lands that were of Robert Panes [the father]. The king lately granted to the said Thomas the wardship of the said lands by occasion of the idiotcy (*idiotie*) of the heir of the same Robert, but he did not have the wardship because Robert in his lifetime alienated the lands.⁴⁰

Although not a routine action on the part of the crown, this and the other cases mentioned here illustrate how important it became to keep together an inheritance. This particular case also illustrates a father who attempted to keep

³⁸ CPR: Edward III, XI: 1358–1361, 409.

³⁹ Kew, TNA PRO, C 136/29, membr. 12, and CIPM, xv: 1–7 Richard II, no. 895, p. 353.

⁴⁰ Kew, TNA PRO, C 66/267, membr. 28, and CPR: Edward III, XII: 1361–1364, 318.

an inheritance out of the hands of his mentally incompetent son. By the late fifteenth or early sixteenth century, this type of practice had become more common and acceptable. The law stated that the transactions of a person while he was mentally incapacitated would be invalid, and by extension this included the actions of those persons entrusted with the safekeeping of the mentally incapacitated landholder's property.

Self-Imposed Wardship

The group of mentally incompetent persons with lucid moments occasionally figured out ways to remain independent and unnoticed by royal officials. These desperate and clever individuals found ways to avoid 'the king's hand', in an attempt to preserve rights of inheritance during their own lapses in mental powers of reason. The ability to keep these arrangements viable depended on how frequently lapses into mental disarray occurred, how long each lapse lasted, and how carefully each individual administered his lands without the intervention of the king.

Individuals with times of lucidity often were aware of their conditions and tried to prevent themselves and their families from becoming wards since guardians, even royal ones, siphoned away as much income as possible. Remaining independent gave families, especially wives and children, their own income and this income allowed mentally incompetent individuals and their families more personal freedom. When the king took charge of a mentally incompetent person and placed that person in the care of a guardian, when and if he became lucid, he would have to spend time and money in court to regain his independence; whereas, if family members, friends, neighbours or others could maintain the obligations of the estate during lapses of the landholder into mental incompetence, recovery periods would be less dramatic. This was a gamble of trust, but one some were willing to take. If all went as planned, these individuals could have something approximating a normal life during times of lucidity. Some, knowing their conditions were severe and ongoing, tried to arrange a type of self-imposed custody, setting up provisions for their families in case they lost the ability to comprehend reality once again.

Morris S. Arnold, the editor of the *Select Cases of the King's Court, 1307–1399*, suggests in his introduction that a variety of people attempted an early form of a modern trust,⁴¹ including ageing parents, uncles without children, or

⁴¹ *Select Cases of Trespass from the King's Court*, ed. by Arnold, I, p. lii.

infirm grandparents. Some of these people simply wanted to enfeoff their children early, or provide for themselves in their old age at a time when many did not live to be 'old'. This practice was also true of those mentally incompetent persons with intermittent times of sanity. Several instances exist in the records in which a mentally incompetent individual, while sane, set up an agreement with another party to care for himself, his wife, his children and his property in case of future times of insanity, depression, or other form of collapse. The arrangements normally took the form of some kind of temporary granting of land to an outside party who acted much the same as a royal guardian by caring for the person, his family, and his property out of the profits of the land, while keeping all other income for himself during the time that the original holder of the land was incapacitated. The lands were returned to the rightful heir upon his recovery. These types of arrangements had a couple of benefits: First, the family did not have to wait for the king's escheator or absentee guardian to visit to get help for daily obligations necessary. Second, the ward and his family did not have to have the trauma of an overly greedy or negligent guardian. Third, the mentally incompetent landholder did not have to find the time and money for a suit to recover his lands later; he just re-entered.

Sometime these arrangements worked well and at others, they did not; the outcome seems to have depended greatly on the trustworthiness or honesty of the one entrusted with the property. For example, William Turner had, 'on one occasion when he returned to his own rational senses, being aware of his weakness [...] and wishing to arrange his condition and support', enfeoffed John and Thomas Fifehead with control of his property, goods, and chattels if and when he were to become incapacitated. William wanted to make certain that someone would be there

to take care of and support himself and his [...] wife from the profits therefrom; so that if he, God willing, could return to his sanity and good sense (*sanitatem et sensum*) from the aforesaid sickness then it would be fully permissible for the same William to re-enter [his] tenements.⁴²

William had re-entered, and at the time of the deposition, had lived there many years with his wife. William had arranged his affairs with two persons, and perhaps that had something to do with how well it worked.

Sometimes these prearranged terms backfired. The party most lately in possession of the land could simply 'forget' that he was to return the lands or just

⁴² *Select Cases of Trespass from the King's Court*, ed. by Arnold, II, 390.

refuse to do so. With similar conditions as in the above situation, in 1370, a mentally incompetent man made such an arrangement with his neighbour to take care of his lands, pay his debts, and care for his sons during his next period of mental incapacity. Eight years later when he regained lucidity once again, the original owner of the property re-entered his land but a jury found that he had lost his rights to the land when he signed them away.⁴³ In this case, the original owner had lost his lands for some now-unknown reason, which could have been in the wording of the agreement, or in the length of time of his incapacity, or the death of the person to whom he had originally granted the land, or any number of other causes. Nothing is mentioned about his sons in this record; one learns only that his land now belonged to the trusted neighbouring family.

The case of Eustacia, the daughter and heir of Peter de Percy and wife of Walter de Heselarton, was somewhat different than that of William or this other man because of her station and her condition. She tried to establish care for herself and her lands as well, before she became incapable of caring for her property. Rather than a simple agreement with the neighbours, she sought royal protection through her court connections. In 1350, the king granted 'at her request' that,

Thomas Ughtred, John de Hothum of Scoreburgh the younger and Martin de Skiryn, clerk, shall be guardians and defenders of her and her lands during her pleasure, so that they support her as becomes her estate out of such lands and goods and answer to her for any balance over.⁴⁴

She requested assistance possibly because of frailty, 'on her petition shewing that she is now broken by age and very feeble'. Perhaps Eustacia suffered from a more serious condition such as the onset of senility, dementia, or something akin to what is now called Alzheimer's Disease: in 1367 the escheator incorrectly stated that 'she was an *idiot*a from birth',⁴⁵ indicating that she had been mentally incapacitated for as long as anyone knew. (As far as I can calculate, she was about forty-seven years old in 1350 when she requested assistance, which would put her at sixty-four at the time of the second statement.) Still, Eustacia successfully provided for her own protection and welfare by appealing directly to the king.

⁴³ *Select Cases of Trespass from the King's Court*, ed. by Arnold, II, 390.

⁴⁴ Kew, TNA PRO, C 66/232, membr. 4, and CPR: *Edward III*, ix: 1350–1354, 19.

⁴⁵ CPR: *Edward III*, XIII: 1364–1367, 340.

In the above three cases, these mentally incompetent persons tried to secure the care of their lands and themselves during times of sanity. In other cases, the families of mentally incompetent individuals found ways to care for landholders and maintain their properties while avoiding the attention of the king. One such case is that of William de Roches; he became mentally incompetent as an adult and his family stepped in to care for him without royal permission. William as an adult became mentally incapacitated and was unofficially and understandably cared for by a family member, Sir John de Roches. Royal officials did not notice the situation until land transferred hands in the 1340s. It seems that prior to William's affliction, he had purchased the manor of Bromlegh from his relative, John de Roches, a knight and apparently William's brother. After William could no longer make cognizant decisions for himself, John reoccupied the manor. The manor of Bromlegh had a yearly value of 14*l.* and was held of Edward Stradlyng by knight's service as part of the larger manor of Compton Haweye; Edward held his estate under the abbot of Shirborn, who was holding from the king. The records contain nothing concerning the condition of the estates or of the health and welfare of William; therefore, it is reasonable to assume that John de Roches had adequately cared for both. John had taken back the lands that he had sold to William and nothing much was made of his actions until he transferred the lands to John de Brideport and his wife, Maud.⁴⁶ Since the lands technically belonged to William de Roches and not to John de Roches, the king's officials protected William's rights to the lands. Even if William continued to be supported and cared for by John, the law presumed that William might get well and would then need the income from his lands. If he died, his heir would have rights to the lands. In this case, his presumed heir already controlled the lands. The king protected the theoretical right of property and welfare of the mentally incapacitated individual since he had no way to protect himself. After all, if he ultimately did not have lands, he would become a burden to the community. What is more important, while the lands belonged to William, the profits belonged to the crown during his affliction. John had sold off William's property and had William in his custody, and as the heir of William and beneficiary of the lands' income, this was intolerable to the king. John, however, had a far greater income and social position than most attempting to personally gain from a mentally incapacitated person's unfortunate incapacity. John probably was not driven by avarice in this situation. In this instance, it does not seem as if William would have become a burden

⁴⁶ Kew, TNA PRO, C 145/147, membr. 4 and *CIM*, II: 1307–1349, no. 1780, pp. 440–441 (1342).

for the community either. Nevertheless, the king's officials upheld the law, most likely to garner the 14*l.* per year.

The law was attuned to the principle that family members would likely take advantage of the mentally incompetent if given half the chance, and also that once in a while a family member did assume the role of caregiver to gain access to an inheritance without the permission of the family or king. Many times they took on this role in part out of necessity in order to aid the handicapped person. For example, Philippa, the eldest daughter of William de Hacche, in the mid-1340s inherited 'a messuage' in Glastonbury and '2 virgates of land in Idemeston'.⁴⁷ She had been in the custody of Joan de Hacche for seven years. Joan had taken all the profit out of the land 'without the king's license and [the land] is of yearly value of 6*s.* 8*d.* (*sic*)'.⁴⁸ The record does not say that Joan had wasted the lands but states that she kept the profits, meaning she had not given the king his due. Joan was a relative of Philippa, perhaps a sister or cousin who not only acted as Philippa's caregiver but also took advantage of her inheritance considering her condition, which went unnoticed by the king's officials for seven years. The king could not act, obviously, in cases of which he had no knowledge. If an inheritance quietly went to the wrong person or if a seemingly logical transaction took place, the king and his representatives might never notice. Philippa de Hacche was not alone in having her inheritance circumvented by relatives interested in gaining from the inheritance either to help the afflicted person or to help themselves. In either case, by keeping the king away from the family's income, the relatives kept it in the hands of the family.

A number of families kept mentally incompetent heirs from coming to the attention of the king or his justices, and in some cases, mentally incompetent individuals never received a guardian because they were overlooked. Some families just skipped the mentally incompetent heir in the hope that royal officials would not notice the switch. For example, the father of Thomas de Scorburch tried to leave his lands to his younger two sons 'by divers charters'. The king found out from an inquisition by the Exchequer and assertions by other persons that something was wrong with the line of inheritance to the brothers. Once he took the lands into his possession, the king profited from the lands for many years by granting the wardship lands to someone outside the family, Wolfard de Glistere. The heir, Thomas, was born mentally incompetent (*est idi-*

⁴⁷ Kew, TNA PRO, C 145/148, membr. 6. See also: *CIM*, II: 1307–1349, no. 1803, p. 448.

⁴⁸ *CIM*, II: 1307–1349, no. 1803, p. 448. See especially, Kew, TNA PRO, C 145/148, membr. 6 where it looks like it reads: '6*s.* 7*d.*' See also: *CCR: Edward III*, VII: 1343–1346, 42.

ota et existit a nativitate) and his father had tried to have the younger, competent sons inherit.⁴⁹ Many who had been born incompetent and were continuously in a state of mental disarray could not ask for what they needed much less for what they deserved. In one example, John Roger lived for sixteen years without any support from his family-appointed guardian, before the escheator became aware of his condition and made him a ward of the crown for the last two years of his life. Earlier in the 1350s, John Holecroft and his son, Alan, gave to John's daughter, Margery, and her husband, James Roger, a gift of property in Heyngham Sibille owing service to the abbess of Mallyng. This small but welcome gift was theirs to pass on to their heirs 'begotten on her [Margery], with remainder to his [James's] right heirs'.⁵⁰ James and Margery had a son and heir, John Roger, 'an *idiot* from his birth'. Yet, upon the death of Margery, James transferred all of the property in simple fee to his bastard son, John Fitz James Roger, on the condition that John Fitz James and his heirs 'should give the said idiot during his life a peck of wheat and a peck of peas weekly for his maintenance, a tunic yearly at Christmas for his clothing, two pairs of boots and two pairs of shoes, and a bed worth 2s'.⁵¹ John Fitz James occupied the lands for two years fulfilling the requirements completely; later, he granted the lands to Richard Huraunt, who also agreed to keep the heir John Roger in accordance with the conditions of the grant. Richard held the property for nine years and yet 'utterly refused to fulfil the condition. [And,] after his death Richard his son and heir entered thereon, and has occupied them for seven years past, making the like refusal'.⁵² John Roger's father had died shortly after he had made the grant to his bastard son with the provision of care for John Roger the legitimate heir. John Roger was still alive eighteen years after his father had died, sixteen of which he lived without provision for his care. His condition must have been poor: local communities often provided for the disadvantaged within the town limits and quite likely this was his only means of sustenance.⁵³ The local town presumably brought the suit before the king in hope of finding relief for John Roger as well as themselves. Since Roger Keteryche the escheator in the county

⁴⁹ Kew, TNA PRO, C 60/140, membr. 24. See also *CFR*, v: *Edward III, 1337–1347* (1915), 171.

⁵⁰ Kew, TNA PRO, C 145/205, membr. 12. See also *CIM*, III: 1348–1377, no. 944, p. 357.

⁵¹ Kew, TNA PRO, C 145/205, membr. 12. See also *CIM*, III: 1348–1377, no. 944, p. 357.

⁵² Kew, TNA PRO, C 145/205, membr. 12. See also *CIM*, III: 1348–1377, no. 944, p. 357.

⁵³ See: Rubin, *Charity and Community in Medieval Cambridge*; and Clark, 'Social Welfare and Mutual Aid in the Medieval Countryside'.

of Essex had investigated the case, the king provided John Roger with a guardian, returned his lands to him, and provided for his care out of the lands.⁵⁴

Other cases demonstrate how easily the attention of the crown could be deflected as well as why families attempted to keep from being subjected to the royal wardship system. Robert Barry of Tothale, discussed in the previous chapter, was mentally incompetent for over seventeen years and seemingly without lucid intervals, living with his wife and children. A family member continued his obligations without any interference from the king's escheators and other officials from 1346 to 1360 at which time his estate was finally given a guardian.⁵⁵ This long absence of any attention from the crown might be for several reasons. First, the officials might not have known and no one with an interest in the property brought this issue to their attention. Second, although his condition began in 1346, much of his mental incapacity was during the plague years, and if the property were being adequately cared for, the court may have been too preoccupied with other matters to care. Third, his family knowingly kept the information from the courts and perhaps their neighbours.

The system of guardianship may have had problems and abuse yet those mentally incompetent persons who had guardians did have some protection from greedy family members, over-anxious heirs, and land-hungry lords. The guardians did preserve, at least to a degree, the inheritance intended for the mentally incompetent landholders and their children or other family members, even though the heir's sane wives and children might have fallen under the control of these same guardians. Nevertheless, the emphasis was on preservation of the land and inheritance, not on the care of the mentally incompetent individual.

It cannot be overlooked, nonetheless, that if mentally incompetent persons with periods of lucidity and their families managed to avoid the king's hand meddling in their affairs, they seem to have been more stable economically. Their wives and children were able to keep the profit from the land, and because they were without the supposed protection offered by the king, both the mentally incompetent individual and his family were released from the burdensome role of having their lands become an income for the crown.

⁵⁴ 'The said John died on 2 January, 51 Edward III. John Boket, chaplain, and John Warde of Little Mapeltrestede, both of full age, are his heirs.' *CIPM*, xv: 1–7 *Richard II*, no. 138, p. 53.

⁵⁵ In the entry *CPR: Edward III*, xi: 1358–1361, 429 (18 June 1360), it reads 'Robert son of Robert de Tothale has been fatuous and an idiot from the king's twentieth year', but all other records say 'Robert son of Simon de Tothale'. For example see *CPR: Edward III*, xi: 1358–1361, 543; x: 1361–1364, 69; xiii: 1364–1367, 223 explained further that it was 'Simon the father by the name of Simon Barry'.

Post Mortem of the Mentally Incapacitated Ward

A wardship ended not at the moment when a mentally incapacitated heir became sane or died, but rather at the time when the king's officials told the guardian to leave. At the end of a wardship, there were administrative procedures to return the protected lands to the correct person. The lands might be turned over to the mentally incapacitated person if he were to regain sanity or to his heir or heirs if he had died. Under some circumstances the process went smoothly and directly. The simplest transition occurred when the mentally incapacitated ward died and his heir was his male, adult child. If his heir were a minor, a guardian would have been provided for because she was a child and the lands would have remained in the hands of the king until she became an adult or married. If the ward died without children, the line of inheritance was often less direct and claims to the inheritance needed to be carefully checked before the escheator or other royal official transferred the lands into someone else's hands. Upon occasion, no heir could be found and the king kept the lands for a time on the chance that an heir would eventually come forward, allowing the land to remain with the guardian in the meantime. Normally, the transfer was made from the office of the exchequer, once he or the king had been informed of the death of the ward and knew the identity of the correct heir. The record would usually read, 'Order not to intermeddle further with the lands in X, taken into the hands of the king on account of the madness of Y'. For example, in the Close Rolls of 1308:

To the treasurer and barons of the exchequer. Order not to intermeddle further with the lands in Slavelay and Stele, co. Northumberland, that were taken into the late king's hands on account of the madness (*fatuitas*) of John de Slavelay, his death having been certified to them and the lands not being held of the king in chief. They are to revoke any commission of the lands that they may have made.⁵⁶

Other records indicate the same, as in 1309: 'not to intermeddle further with the lands of Agnes, daughter of Margaret de Beaumeys, an idiot',⁵⁷ which gave no identification of an heir. The notice would be sent to a trusted official, the sheriff, or the escheator 'to remove the king's hand, and not to meddle further'.⁵⁸

⁵⁶ CCR: *Edward II*, 1: 1307–1313, 73.

⁵⁷ CCR: *Edward II*, 1: 1307–1313, 90. See also Kew, TNA PRO, C 134/7, membr. 10 where she is described as *fatua et idiota*; CIPM, v: 1–9 *Edward II*, no. 84, p. 41.

⁵⁸ CCR: *Edward III*, xiv: 1374–1377, 127.

The escheators spent much of their time investigating post-mortem cases, or surveys after death, in order to properly secure and transfer an inheritance to the correct heirs. The escheator, therefore, also often responded to complaints that arose in the courts regarding inheritances that led them to look into related matters that might involve the mentally incapacitated such as trespass, *mort d'ancestor*, improper alienation of land, and destruction of property. The escheator informed the chancery of many cases of mentally incapacitated heirs: in 1300, the case of Alice Parker, who became mentally incapacitated (*idiotia & non compos mentis*) in 1296 with an illness;⁵⁹ in 1301, the case of Ralph Trelewith, who could not be found since he was on his way to Westminster for examination where they judged him to be sane⁶⁰ after local authorities had found him insane ('*idiotia & non compos mentis sue a nativitate*');⁶¹ in 1302, the case of Richard Bachesworth, 'an idiot' who held his lands of the earl of Cornwall.⁶² In each of these instances, the escheator responded to a writ written by others that already knew of the existence or possible existence of a mentally incapacitated heir.

It might take several years before the king realized that the ward had died, as it was not always in the interest of the guardian to point out this detail. If out of the area, a guardian might not even know that his ward had died, having left his attorney or some other party caring for the ward and the lands. It could be problematic for a guardian to keep lands too long, since he was often told to deliver 'any issues thereof taken since the death' of the mentally incapacitated ward.⁶³ These 'issues' could amount to a large sum if the lands continued to be held for years after the death of the ward. Typically, adult heirs would bring the ward's death to the attention of the courts in order to gain possession as quickly as possible. For example, John Brampton died in 1371 and the escheator was not ordered to deliver the property to the heir, John's brother Richard, until 1375. A delay such as this could be caused by a number of reasons other than the king not knowing that his mentally incapacitated ward had died. Some heirs could not be identified immediately. For example, they could not be located or there was a legal dispute among possible heirs. There could also be multiple heirs and the division of the property might take time. In the case of

⁵⁹ Kew, TNA PRO, C 133/92, membr. 3.1–2; *CIPM*, III: 20–28 *Edward I*, no. 547, p. 422.

⁶⁰ *CIPM*, III: 20–28 *Edward I*, no. 614, p. 492.

⁶¹ Kew, TNA PRO, C 133/98, membr. 9.

⁶² *CIPM*, IV: 29–35 *Edward I*, no. 68, p. 43.

⁶³ For example see: *CCR: Edward III*, XIV: 1374–1377, 156 (1375).

Agnes atte Bergh, it only took a few months to establish the identity of her heir. Agnes atte Bergh 'died on Thursday after the Epiphany last, and [...] the said Margaret is her cousin and next heir, being daughter of John Wylot son of John Wylot brother of Stephen atte Bergh father of Alice mother of the said Agnes, and is of full age [an adult]'.⁶⁴ The care that the escheator used to discover and explain the relationship of the heir to the ward demonstrates what caution he used when an inheritance involved land, even land not held in chief.

Establishing the correct line of inheritance not only avoided possible future legal problems, but it also supported a family as income. Making certain the correct heir held the land was important to the social order of England, because land meant that an heir could have a family and a family resulted in more heirs.

* * *

According to legal commentaries of the late thirteenth century, in the twelfth and the first half of the thirteenth century, mentally incapacitated landholders were subject to the whims of their relatives or, occasionally, lords.⁶⁵ Relatives in line for an inheritance would most likely want to care for a mentally incompetent relative rather than see that person fritter away their future lands and chattels. In nearly every instance, it is difficult to figure out from the records who actually did the care giving for the mentally incapacitated person, and it is easier to figure out who cared for the person's land. The documents mentioning the mentally incapacitated detail their lands and goods, while providing sparse information about the people.

In theory, the change in the practice of wardships for the mentally incapacitated protected them from abuse; in reality, this new arrangement gave the crown greater disposable income in the form of long-term wardships and more royal control over land in general. This change in wardships for the mentally incapacitated was gradual — growing through the mid-thirteenth century. It required little change in royal bureaucratic procedure.⁶⁶ The administrative bureaucracy used the same division of the mentally incapacitated as the legal theorists who divided the mentally incapacitated into two main categories: those born unable to reason and those who later became senseless. Yet, the

⁶⁴ *CCR: Edward III, xiv: 1374–1377*, 304–05, and Kew, TNA PRO, C 54/215, membr. 14.

⁶⁵ See Chapter 2.

⁶⁶ Technically this would not include serfs since the 'land' they might 'inherit' did not belong to them but to their lord. It also included free peasants who held land.

administration focused its attention more on property management than on mentally incapacitated individuals by design.

The care and custody of the mentally incapacitated depended greatly upon whether or not there was an inheritance. If there was, the king claimed the custody and wardship first of his own mentally incapacitated landholders, and later of all landholders with reasoning difficulties. In both cases, the king most likely re-granted the care and custody to someone of his choosing. Some of those grants were in payment of a royal debt or retainer. Most of the time, the guardian would be someone from the mentally incapacitated heir's family. The record of wardship provided a tangible means by which the rights of vulnerable heirs could be reinforced in the future, and encroachment by neighbours, relatives, lords and friends discouraged.⁶⁷ The nobility of England realized that they could protect their heirs using the advancement in administration to create a legal record of their holdings.

Mentally incompetent individuals and their families did upon occasion violate the king's laws in attempting to avoid the king taking property out of their custody or that of their immediate family. Those mentally incapacitated persons with lucid moments were sometimes able to remain independent, depending on how frequently their lapses into mental disarray occurred. Often these individuals were aware of their conditions and tried to keep themselves and their families out of wardship, since guardians, even royal ones, often siphoned away as much income as possible. Remaining independent gave their families, especially their wives and children, their own income and it allowed mentally incapacitated individuals and their families more personal freedom. When a mentally incapacitated person returned to sanity and found himself under a guardian, he would have to spend time and money in court to regain his independence. Whereas, if family members, friends, neighbours, or others could maintain his obligations during lapses into mental incapacity — a risk, but one some were willing to take — recovery periods would be less dramatic. They could have more normal lives during their times of lucidity. Some individuals, knowing their conditions were severe and on going, tried to arrange a type of self-imposed custody by setting up provisions for their families in case they lost their ability to comprehend reality once again.

⁶⁷ Bothwell, *Edward III and the English Peerage*, pp. 67–77.

GUARDIANS

Joan, when brought before the council and examined, was found to be incapable of managing her affairs, and the king committed the keeping thereof to Thomas Goioun, her kinsman, for a farm of 20*l.* yearly.¹

The institution of wardship acted as a proxy family structure and as a buffer of physical and legal protection between the ineffective landholder and his heir. Ineffective landholders included those who were underage, some females, and the mentally incompetent; in other words, an ineffective landholder was someone who could not carry out the responsibilities associated with property or represents himself legally. Wardship provided the means by which an inheritance could be kept together, the obligations of the position and property could be met, and any administrative questions answered, as well as income be provided for the crown.² This chapter examines the role of the guardian in the life of his ward — how the guardian treated his ward, the ward's family, and his property. The guardian's job was to oversee the afflicted individual's property, while a keeper or custodian looked after the landholder under the instruction of the guardian. Rarely was this custodial person identified or acknowledged in the records. In some cases it is implied that the guardian looked after the incapacitated person; in others, the guardian was absent much of the time and could not have been the caregiver.³

¹ Joan Wantyng. *CPR: Edward III*, xv: 1370–1374, 419.

² Waugh, *The Lordship of England*, pp. 207–31.

³ More work could be done on caregivers. Once in a while, the records mention these persons as being paid out of the funds from the lands of an afflicted person, such as Mary Baxster 'keeping' John Thymolby as her 'ward'. John Thymolby had three guardians in charge of

Many factors could affect the three-way relationship between the guardian and the ward and the ward's family, not least of which was the personality of guardian or guardians. Some guardians stripped the land of all value; others paid outstanding debts, collected rents, and spent money on upkeep. The number of guardians could change the dynamic of the family's relationship to the guardians; depending on the size and value of the property, greater or fewer numbers of guardians might be assigned. The vast majority of guardians were in some way related to their charges, some quite distantly; far fewer numbers were not related at all. The crown used the wards' lands as a way to pay royal debts, and some people received guardianships because the crown owed that individual payment. These guardians often lived far from the property, which could prove liberating or oppressive to a family depending on conditions. Other individuals to whom the crown wanted to lend its support were handed guardianships. These persons kept the land in production while paying the expected profit to the Exchequer. The guardians under these conditions were to keep a fee for their trouble. In order to make certain the profit was maximized, they often over-worked the land and kept the excess. Since everyone, theoretically, held their land from the king, and the king was favouring the ward by providing him or her legal and social protection, and again in theory, during the ward's incapacity he would not need the surplus income, the king was justified in using the profit from these lands to pay his debts and make some money in exchange for his generous care.⁴ Most guardians wanted to make certain that they received as much or more than what they were owed for their trouble and many ruined the land, leaving families in hardship. The crown charged guardians to care for these properties and people; only when the crown began to lose money were these guardians replaced or fined or both.

John Brewes: A Ward of the King

The wardship of John Brewes, an individual who was born mentally incapacitated with lucid moments in the mid-fourteenth century, serves as an excellent example of the complexity of the relationship between the mentally incapacitated individual, his family members, his guardians, and the king. After a string of guardian appointments and several court battles between John's wife and

his property — John Kyghley, William Kyghley, and John Baylly. Kew, TNA PRO, C 60/234, membr. 7, and *CFR*, xv: *Henry VI, 1422–1430*, 180.

⁴ Bothwell, *Edward III and the English Peerage*, p. 69.

one particular guardian, the king made an interesting exception to legal precedent and placed a small portion of a larger inheritance *directly* into the hands of a mentally incapacitated person; albeit this person had lucid moments, though he still had deranged ones. He had a tenacious wife and family who had kept the king's commissioners and escheators quite occupied, so that in 1363,

the king, compassionating the state of John son of John de Brewosa, knight, and Joan, his wife, who have nothing to live of unless relieved by him [the king], has committed to them the keeping of the manors [of Wauton and Henesheved] for the life of the said John for the sustenance of them, their children and household without rendering anything to the king; with remainder to the right heirs of the said John.⁵

The state of affairs that had brought the king to make this generous and unconventional grant speaks to the common process that every mentally incapacitated heir in the king's wardship would have gone through. John Brewes's story contains all of the typical details regarding relationships between the heir and his family, the heir and his guardians, and the heir's property and the king.

The circumstances of John Brewes's life earned him a certain degree of notoriety and care from many in the community. He was a somewhat distant relative of the king, but his royal connection was close enough to gain him some royal attention. He had also married into a family that could and did fight to protect his interests at court. Even in this favourable situation, John had family that took advantage of him, his wife, and his children. While he was incapacitated, other family members and guardians sold off goods and property, overworked the land, and swindled him out of portions of his inheritance. The system of wardship offered some protection to the heir, his family, and his inheritance, but abuse was a reality.

John Brewes, the *idiote*, appeared in the Patent Rolls of 1355 when he inherited land. Since the death of John's mother, Margaret, the king had incurred a monetary loss because John had mismanaged his lands during his mentally incapacitated lapses. His tenants complained, and some of the property had been sold. The king asked a commission of five men — Sir John de Lysours, Sir Thomas de Saundeby, Edmund de Cornewaill, John de Ludyngton, and a clerk, Simon de Alyngton — to review the matter.⁶ Edward III then placed

⁵ Kew, TNA PRO, C 66/268, membr. 20. See also: *CPR: Edward III*, xii: 1361–1364, 416 (8 November 1363).

⁶ Kew, TNA PRO, C 66/245, membr. 12d. See also: *CPR: Edward III*, x: 1354–1358, 234–36 (8 May 1355). The king used many such commissioners following the Black Death, especially in cases involving multiple properties.

'John, son and heir of John de Brewes, an idiot' (*idiota*),⁷ in wardship to three relatives (see Figure 2). The first was John's stepfather, Norman Swynford, who already held all of John's lands in Lee, Geyburton, Scothorn, and Misyn, which he had John quitclaim to him sometime in the 1340s.⁸ Later this quitclaim became an issue of contention between the two sides of the family; it seems that there was some uncertainty as to whether John had given Norman the land under duress or while mentally incapacitated or willingly. The second family member to become one of John's guardians was his cousin, Sir Thomas Brewes,⁹ son of Peter Brewes.¹⁰ John Brewes was related to his third cousin once removed, Thomas Brewes, through John's great-grandfather.¹¹ The third guardian was another 'cousin', the nephew of Thomas Brewes: John Cobham. John was related through his mother, Mary Brewes, the countess Marshall, sister of

⁷ The name Brewes (Brouse, Brousa, Brewosa) appears in multiple forms, as do other family names for other persons. This creates great ambiguity for the researcher as to which John (de) Brewes a particular document refers. See Figure 2, Guardians of John Brewes. See esp. Fleming, 'Cobham Family'; Waugh, 'Thomas, First Earl of Norfolk'; Cokayne, *The Complete Peerage of England*, ed. by Gibbs and others, I, 67; *CIPM*, VI: 10–21 *Edward II* (1910), no. 703, pp. 436–39, and XIV: 48–51 *Edward III* (1952), no. 325, pp. 305–14; and *CIPM*, X: 26–34 *Edward III*, no. 211, pp. 189–93. In my dissertation, I confused the descent of nearly everyone in this family. In part this was because I had relied on the work in the old edition of the *Dictionary of National Biography*, ed. by Stephen and Lee; the new one was not yet out. Under the entry for 'Thomas of Brotherton' (XIX, p. 633) it stated that Thomas Brotherton married 'Mary, daughter of William, lord Roos, [...] survived her husband, married Ralph, lord Cobham', etc. This is erroneous. The author mixed up — as I did later — Mary Roos and Mary Brewes. Mary Roos married William de Brewes and is the grandmother of both Thomas Brewes, guardian of John, and Mary Brewes her namesake. She died in 1326. Mary Brewes first married Ralph Cobham, producing his heir, John Cobham — guardian of John Brewes — and, after the death of Ralph, she married Thomas Brotherton, Earl of Norfolk, as his second wife. She died in 1362. See: *CIPM*, VI: 10–21 *Edward II*, no. 702, p. 435, and no. 723, p. 458; *CIPM*, X: 26–34 *Edward III*, no. 211, pp. 189–93; no. 390, pp. 318–20; *CIPM*, XI: 35–38 *Edward III*, no. 397, pp. 305–14; and *CIPM*, VIII: 10–20 *Edward III*, no. 529, pp. 377–78.

⁸ *CIPM*, X: 26–34 *Edward III*, no. 211, pp. 189–93, esp. p. 190.

⁹ Sir Thomas Brewes (d. 1361) married Beatrice, the daughter of Roger Mortimer, the earl of March. They had two sons: Sir Thomas Brewes, who died in 1395 along with his two small children, Joan and Thomas; and Sir John Brewes who married Elizabeth, the daughter of Sir Edward Monte Acuto. Thomas and Beatrice also had a daughter Beatrice who married William de Say.

¹⁰ Thomas Brewes was the uncle of John Cobham. See: *CPR: Edward III*, XII: 1361–1364, 421 (6 November 1363), and *CPR: Edward III*, XIII: 1364–1367, 82.

¹¹ John appeared in the 1357 Patent Rolls, described again as an *idiota* when the king granted the wardship of John's lands in Surrey to Sir Thomas Brewes. Kew, TNA PRO, C 66/253, membr. 3. See also *CPR: Edward III*, X: 1354–1358, 646 (20 December 1357).

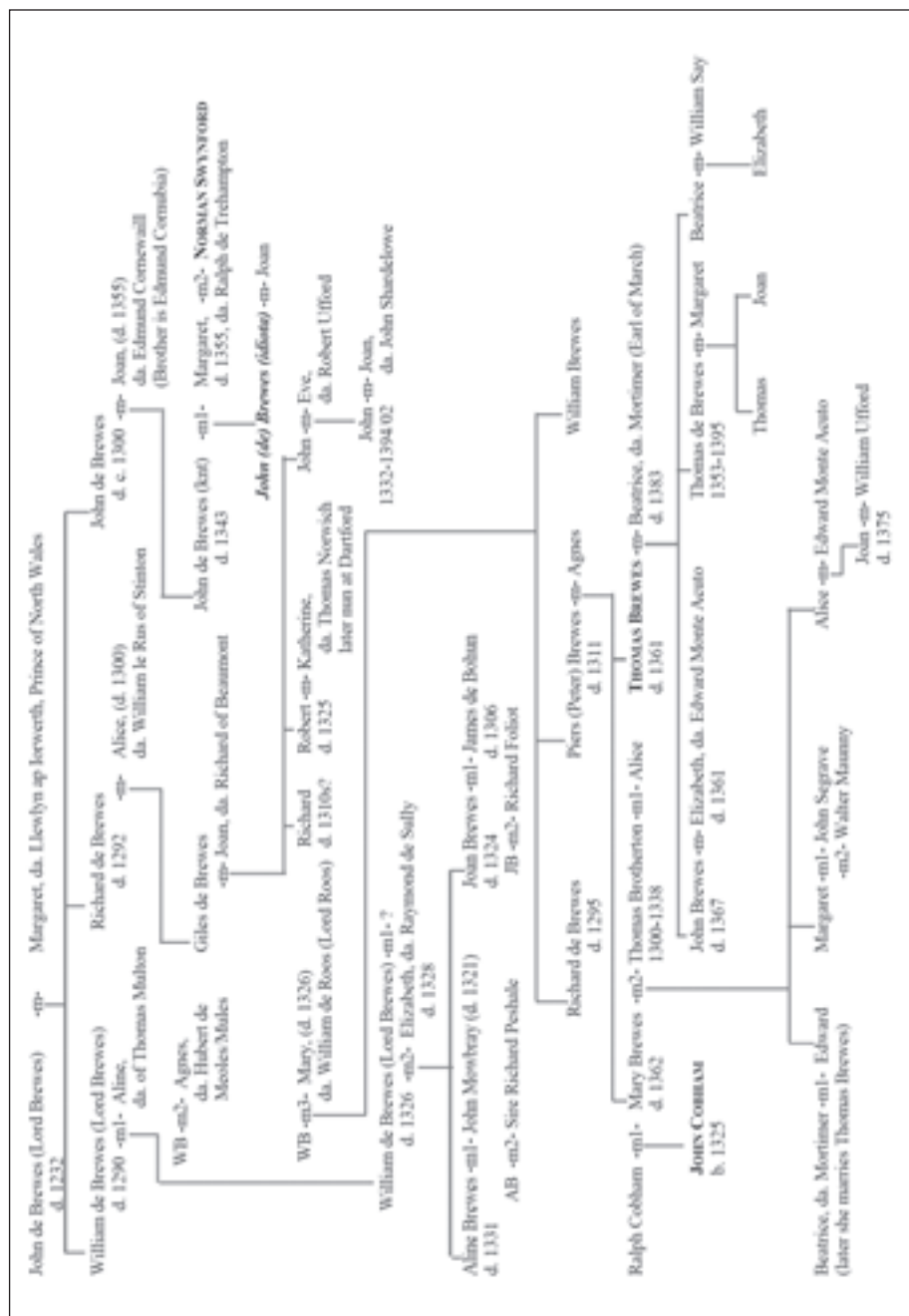


Figure 2. Guardians of John Brewes

Thomas Brewes the second guardian, and sister-in-law of the king. Edward III placed John Brewes and all his holdings in the county of Lincoln, where John and his family resided, in the care of John Cobham.¹² Cobham was to act as the guardian of Brewes's lands and as the custodian of his person in a manner similar to a Roman *curator*. Of the three guardians, only Cobham was given the task of providing for John, his wife, and his children. Cobham was supposed to oversee their welfare, including food, clothing, and shelter fitting to their station, and was to pay all of Brewes's debts. Although having three guardians might seem unduly complicated, these three guardians oversaw holdings in different counties with separately assigned tasks spelled out and documented by the king's officials.

Margaret, the mother of mentally incapacitated John Brewes, had acted as his guardian overseeing his property until her death in 1355. In the broadest of terms, he had been in her 'custody' from the time he had been born, prior to his inheritance, and continued in her custody even though he held lands in several counties. When problems arose after his mother's death, the king needed to step in and appoint guardians.¹³ Prior to his status as the king's ward, John had been undisturbed in the care of his mother, which was typical. Mothers often acted as guardians for adult mentally incompetent landholders as long as the mothers could fulfil the obligations of the property.

A wife, though, had little or no rights to the custody or control of her husband or his property. A wife could demand her right to live according to her station, and in 1359, Joan, the wife of John Brewes, filed suit against John Cobham in the king's court for failing to provide her husband, their children, and her with enough income on which to live. The king had sometime earlier reprimanded John Cobham for not having kept Joan, the children, or the manor household 'in sustenance'. In the 1359 suit, the council ordered that Joan should be granted forty marks per year directly out of the lands, bypassing the guardian. The king had also originally 'commanded John de Cobham to pay what was in arrears', which Cobham had not done. The king now gave Joan power over herself and over the servants to make back payments both for that year and in the future.¹⁴

¹² Kew, TNA PRO, C 66/256, membr. 9. See also: *CPR: Edward III*, x1: 1358–1361, 197–98.

¹³ Kew, TNA PRO, C 66/245, membr. 12d, and *CPR: Edward III*, x: 1354–1358, 234–36 (8 May 1355).

¹⁴ Kew, TNA PRO, C 66/256, membr. 9. See also: *CPR: Edward III*, x1: 1358–1361, 197 (8 May 1359).

Remarkably, in May of 1361, John Brewes was examined at Westminster and 'after John by process made, being examined before the council, [was] found no idiot'.¹⁵ The king's council returned all of John's vast holdings under Sir Norman Swynford to John, including Lee manor, Gayburton manor, three messuages, seven bovates of land, twelve acres of meadow, and other holdings, including some rents in Lincoln and in 'Notyngham'. The clearing of his name (*Brewosa [...] idiota non est*) from his 'alleged idiocy' was again mentioned in June of 1361, as the king withdrew from holding other lands belonging to John.¹⁶ In 1365, though, John was again named an *idiota* as the king placed a new priest, John Aleyn of Huntyngdon, to a position at Wauton church that was in royal hands 'on account of such idiotcy'.¹⁷ What happened between 1361 and 1365, the records do not say. John probably went through many lucid periods during his life, which explains in part how he managed to get married.¹⁸ It would be hard to imagine how his wife felt when he was pronounced competent, allowing them to return to running the estate together, and then to find he had lapsed back into incompetence and she found herself under the jurisdiction of yet another guardian. All of her hard work to get an allowance from the king would have been thrown out when her husband regained his lands. If she ran into future trouble with the new guardian, she would have to begin the suit over to recover her independence and her allowance of forty marks.

Guardians could be unpredictable; some were quite conscientious, and others found the opportunity of exacting as much extra income out of a defenceless person's property too tempting to pass up. Norman Swynford sold of some of the John Brewes's lands, which he claimed John had quitclaimed to him, and Norman sold the movable property off other of John's lands. Norman's abuse of John's lands is quoted at the opening of the chapter. The worst offences seem to be his determined stripping of the church, including the selling off or melting down of ornamentation, vestments, crosses, and the church bell. The record indicates that much of the damage took place the moment John's mother

¹⁵ Kew, TNA PRO, C 54/199, membr. 24d. See also: *CCR: Edward III*, x1: 1360–1364 (1910), 273–74 (1 May 1361).

¹⁶ Kew, TNA PRO, C 54/199, membr. 26; *CCR: Edward III*, x1: 1360–1364, 189 (20 June 1361).

¹⁷ Kew, TNA PRO, C 66/271, membr. 37. See also: *CPR: Edward III*, xiii: 1364–1367, 82 (15 February 1365).

¹⁸ Marriage could not take place unless a mentally incompetent person, or anyone else, had lucid moments at which time he or she could in his or her right mind agree to the marriage in present or future tense with the words, 'I do' or 'I will'.

Margaret died.¹⁹ It took years after the death of Norman to restore John's lands and properties to him and his family. Norman wanted to liquidate as much property as possible in order to get as much cash out of his guardianship to leave as part of his own estate to his heirs; he could not sell the land, so he sold off all the movable goods. This was not an uncommon practice, although some got carried away; other such greedy guardians chopped down forests for the lumber price or even dismantled and moved buildings to be sold. The king's administrators caught and fined a good number of these guardians for 'wasting' a ward's property but certainly not all.

The treatment, care, and custody of John Brewes, his lands, and his family serve as a typical example of the process endured by a person with a lifelong problem of mental incapacity in fourteenth-century England. Every situation was unique and the royal administration had put in place regulations to handle most circumstances by the middle of the fourteenth century. In John's case, he gained the special attention of the crown's favour as a minor member of the royal family. John also had married during a lucid moment, and therefore had the support of his wife and her family to help with the ongoing interface with the guardians. John, typical of mentally incapacitated wards, remained undisturbed in his mother's care as an adult until both became unable to fully care for his property. When the decline in the property came to the attention of the king's officials, John became a ward of the crown with his properties from three counties divided between three guardians, all three of which had connections to the de Brewes family. One guardian sold off most of the movable property from the land; another did not live up to the charge of paying John's debts and providing for his wife and children; and the last, Sir Thomas Brewes, dealt with the family and the lands fairly. Representative of the variety of guardians, one acted with John's welfare in mind while the other two had their own well being primarily in mind. Because of John's periods of lucidity, he had guardians at times and had none at others. Each time a question arose about his competency, the king's officials — whether a special commission, the king's council, or the escheator — investigated the charge of 'idiotcy'. Based on their findings, the court decided whether to grant yet another guardian over John's property or to leave him in charge of his own affairs. Uncharacteristic of other cases, Edward III granted control of two manors and the related income to John and his wife, bypassing future guardians of these lands, while leaving the remainder of his estates in the care of his three guardians.

¹⁹ *CIPM*, x: 26–34 *Edward III*, no. 211, pp. 190–91.

Those Who Became Guardians

John Brewes had three guardians that were related to him, although some were related rather distantly. Most mentally incompetent landholders with periodic mental confusion had relatives appointed by the crown as guardians. Those born with mental incompetence at times had relatives as guardians, but this was not always true. These wardships were most often the ones used by the crown as payment for debts or rewards for service.

All sorts of people held guardianships, yet most guardians were of the same social status or higher than their wards. Landholders might be nobility or gentry as were their guardians, related or not. For those who were born mentally incompetent, the king or his official could name someone from outside the family as the guardian. Upon occasion the king named his immediate family — the queen,²⁰ his son,²¹ or daughter²² — to a few guardianships. Once in a while a noble would hold a guardianship, such as Richard, the earl of Arundel,²³ and John Mauro (Britannia), the earl of Richmond,²⁴ who held the guardianships of the mentally incompetent Robert Vylers and Robert Walerand respectively. Mostly, the king used guardianships to pay his household and others in administrative service. Many who served as the king's clerk or yeoman were 'paid' with guardianships, as were the occasional tailor, steward, watchman, sergeant, and pavilioner in the king's employ. Administrative officials also reaped the benefit of guardianships. These included the warden of the forest, the usher of the receipt of the Exchequer, and several escheators. A few church officials — a bishop, an abbot, and several parsons — acted as guardians of crown wards. Local persons, including knights, gentlemen, masters, clerks, esquires, sheriffs, commissioners, and in one case a draper, were granted smaller guardianships. The king rewarded some individuals 'for good service' with wardships, such as two of the many guardians of John Walerand, Robert son of Payn and Humphrey de Waleden.²⁵ All of these persons gained from their holding of

²⁰ Eleanor, Queen to Edward I. Kew, TNA PRO, C 145/201, membr. 14, and *CIM*, III: 1348–1377, no. 840, pp. 318–19 (Thomas Arden).

²¹ Edward, prince of Wales, son of Edward III. *CIPM*, xv: 1–7 *Richard II*, no. 167, pp. 168–69 (John Walerand).

²² Isabel, King Edward III's daughter. Kew, TNA PRO, C 66/246, membr. 17, and *CPR: Edward III*, x: 1354–1358, 256.

²³ Kew, TNA PRO, C 66/233, membr. 18, and *CPR: Edward III*, ix: 1350–1354, 61.

²⁴ Kew, TNA PRO, C 66/128, membr. 37, and *CPR: Edward I*, iv: 1301–1307, 492.

²⁵ *CCR: Edward II*, i: 1307–1313, 33.

wardships — some more than others — and most of these persons owed much of the income from their charge to the Exchequer.

The crown did not accrue an enormous return from wardships of the mentally incompetent, but it did acquire some recompense. Calculating the exact amount of income to the crown for a particular year would be difficult because the amounts due were not always spelled out; sometimes a guardian was told to work out the exact amount due with the Exchequer. From the records that did include an amount, an illustration of at least part of the income the crown expected can be figured for a sample years. The chosen sample years are representative in the number of mentally incompetent wards and the number of guardians, and they provide some indication of the expected income. In 1302, the crown earned 93*l.* 9*s.* 3*5d.* just from the wardships that included reported figures. By 1379, the crown was earning 128*l.* 4*s.* 2*d.* from the wardships of the mentally incompetent. From year to year, depending on whose property was in wardship, the income could be much higher. For example, John Wroth held the wardship of John Welyngton in the 1390s and owed the Exchequer 114*l.* 6*s.* 10*d.* or more each year.²⁶ The income for these sample years does not include those wardships used by the crown as payments for service. These monetary amounts are only the income coming into the Exchequer for which amounts were provided in the records. The crown had far more income from wardships than only the cash amounts reported as expected payments from individuals.

The payments to the Exchequer were often to be ‘rendered’ twice a year ‘in equal portions’ usually at Easter and Michaelmas. For example, John Wilby and John Jolyf, the guardians of Thomas Segere owed ‘4*s.* yearly by equal portions at the Easter and Michaelmas Exchequers.’²⁷ The guardian of William Dunton, William Whappelode, was paid 33*s.* 4*d.* out of the wardship and owed the Exchequer 40*s.* in two payments of equal portions.²⁸ The agreement with Whappelode would stand unless someone else ‘without fraud’ would agree to pay more ‘by way of increment’. By the fifteenth century, many wardships of

²⁶ Kew, TNA PRO, C 60/200, membr. 22; Kew, TNA PRO, C 60/204, membr. 21; Kew, TNA PRO, C 60/206, membr. 8; Kew, TNA PRO, C 60/217, membr. 6; Kew, TNA PRO, C 136/96, membr. 1; Kew, TNA PRO, C 137/86, membr. 25; Kew, TNA PRO, E 149/97, no. 11. See also: *CFR*, xi: *Richard II*, 1391–1399, 198–203; xii: *Henry IV*, 1399–1405, 31–32, 134; xiii: *Henry IV*, 1405–1413, 246; *CIPM*, xvii: 15–23 *Richard II*, no. 937–49, pp. 344–48; *CIPM*, xix: 7–14 *Henry IV*, no. 946–51, pp. 337–39.

²⁷ *CFR*, xii: *Henry IV*, 1399–1405, 53 and Kew, TNA PRO, C 60/204, membr. 12.

²⁸ *CFR*, xvi: *Henry VI*, 1430–1437, 317.

the mentally incompetent had increments, or increases in the amount owed at Exchequer, included in the original arrangements.

Above and beyond the amount received in the Exchequer for which there were reported amounts, the king used the institution of guardianship as payment for services rendered and for service in his household. For example, he paid John Britannia, the earl of Richmond with the guardianship of Robert Walerand beginning in 1307. John was expected to earn at least 20*l.* per year out of this wardship.²⁹ Administrators were also paid with guardianships of the mentally incompetent. For example, in 1374 the usher of the receipt of the Exchequer, John Ederyk, was paid with the guardianship of William Mortimer who had been found to be a natural *idiot*: '60*s.* of rent in Magor in Wales of the inheritance of William son of Henry Mortymer, kinsman and heir of Hugh Mortymer'.³⁰ Also, Richard de Holebroke, steward of the king's household, earned 27*l.* per year as the guardian of William de Passenham.³¹ These amounts were money that the crown did not have to spend out of its regular budget, which had been depleted during the long years of on-and-off warfare within England and with France. By providing the guardian with income, the crown saved itself the expense and had land looked after that otherwise might have fallen into non-production.

The income from the many lands of the mentally incompetent worked for the king and paid down his debts while preserving the overall well-being of the lands for the ward's heirs. For instance, in 1374, the court questioned the sale of various lands that Joan Wantyng had inherited from her father John Wantyng, her brothers, William Wantyng and William Harpeden, and her uncle, Thomas Winterborn. The king had her lands restored and 'alienations [made] by her will be[came] of no worth'. She became a ward of the crown and the king protected her lands, paid her debts from the profit of those lands, and kept them safe for her heirs.³² Joan's lands paid two of the king's officials: John Estbury,³³ an escheator, and Walter Wyght,³⁴ the king's yeoman. Joan also had a relative, Thomas

²⁹ *CPR: Edward III*, IV: 1338–1340 (1898), 492.

³⁰ *CPR: Edward III*, XVI: 1374–1377, 15 (12 October 1374) and *CIM*, III: 1348–1377, no. 949, p. 359.

³¹ *CCR: Edward I*, I: 1272–1279, 538; *CIPM*, II: 1–19 *Edward I*, no. 279, p. 159.

³² For a longer entry, see the opening quotes to Chapters 7 and 8. Kew, TNA PRO, C 54/212, membr. 29 (top). See also: *CCR: Edward III*, XIV: 1374–1377, 4 (1 February 1374).

³³ *CPR: Edward III*, XII: 1361–1364, 186.

³⁴ *CPR: Edward III*, XII: 1361–1364, 340.

Goïoun,³⁵ as one of her three guardians. The king and his officials worked to make the best use of the property while protecting the lands and the landholder.

Family Members as Guardians

Guardians controlled not just the mentally incapacitated individual, but also his wife and his or her children. It was not uncommon for mentally incapacitated landholders to be married. There were many cases of mentally incapacitated persons with lucid moments who married and a few without lucid moments who had married as well. Robert Barry of Tothale³⁶ had been married before he became afflicted. Others, such as John Brewes, had lucid moments in their lives and probably married at one such time. Perhaps the family had arranged a wife in hopes that a 'normal' heir could be produced to carry on the family line and inheritance. John Brewes had children and the children did eventually inherit, as did Robert Barry of Tothale's children. The records of occurrences of this type have only vague references to children, with the wife often being omitted either because she was no longer living or because she was unimportant. For example: Robert Vylers, 'an idiot', was in the wardship of Richard, Earl of Arundel in 1351, who was to provide 'out of the issues of the land' for Robert, 'his children and household, and that he commit no waste'.³⁷ The term 'household' can be important — it often included a wife and servants; the 'children' were mentioned separately to demonstrate that Robert had heirs. At other times a wife would be mentioned but not always by name. John Heton, for example, had become mentally incapacitated at the age of twenty-four. He had married before his affliction, with no mention being made of what caused the change in his mental condition. The crown charged his guardians with 'finding sustenance for him, his wife, children and household'.³⁸ This change meant,

³⁵ *CPR: Edward III*, xv: 1370–1374, 418–19.

³⁶ Kew, TNA PRO, C 66/260, membr. 30; Kew, TNA PRO, C 66/262, membr. 24; Kew, TNA PRO, C 66/263, membr. 25d; Kew, TNA PRO, C 66/268, membr. 16d; Kew, TNA PRO, C 66/273, membr. 38; Kew, TNA PRO, C 135/143, membr. 6. See also: *CIPM*, x: 26–34 *Edward III*, no. 492, pp. 388–89, no. 664 (p. 557); *CPR: Edward III*, xii: 1361–1364, 429, 543; *CPR: Edward III*, xii: 1361–1364, 69, 450; *CPR: Edward III*, xiii: 1364–1367, 223; *CIM*, iii: 1348–1377, no. 635, pp. 235–36.

³⁷ Kew, TNA PRO, C 66/233, membr. 18, and *CPR: Edward III*, ix: 1350–1354, 61 (9 April 1351).

³⁸ Kew, TNA PRO, C 66/245, membr. 13, and *CPR: Edward III*, x: 1354–1358, 200–01 (1355).

however, that wives as well as other dependents fell under the jurisdiction of the guardian, even though *they* were quite competent. Only occasionally and under unusual circumstances did a wife, such as Robert Barry of Tothale's, end up the guardian of her mentally incapacitated husband and children. Once a guardian took charge of the land, a wife who may have once held an aristocratic position within her own household now had to live on a budget or allowance. At times she had to release most or all of her household servants.

Other types of dependents, especially women, and their rights in the property could be overlooked in transactions designed to secure the lands of the mentally incapacitated. Katherine de Clendon was the wife of John, son of William de Clendon; when William died in 1362, the king's officials overlooked any rights she may have had to the properties. The royal officials divided William's estate between his sons, John and Ralph, 'who ha[d] been an idiot (*idiot*a) from his birth'.³⁹ Dower lands especially were often forgotten, as when Nicholas de Grene received the wardship of Ralph and his inherited lands, and then, when his brother John died, Ralph fell under another guardian, Hugh Wake, for those additional lands. Katherine, Ralph's mother, had to sue to regain her dower lands out of the estate. She and her rights to any of the estate had been completely forgotten in the attempt to secure Ralph's holdings.⁴⁰ It should not be overlooked that these women were not alone; others with rights in the land — such as legitimate titles of sale or gifts from a parent of a mentally incompetent landholder to another child or from a time before that ward became incompetent — had to sue to reclaim lands.

If an individual was mentally incapacitated from the time of his birth or became so as a child (for example, John Brewes), he might remain in the custody of his mother without any questions from the king or his escheator. For example, Agnes atte Bergh was in the care of her mother, Alice, until she died in 1375.⁴¹ At that time, Agnes was an adult but incapable of caring for herself or her inheritance. The king's officials realized that Agnes could not care for the land and, after determining that she was the rightful heir, made her a ward of the king. It was because of the inheritance she received from her mother that she became a ward. Even in cases in which there would be a large inheritance, a

³⁹ Kew, TNA PRO, C 66/266, membr. 36. See also: *CPR: Edward III*, xii: 1361–1364, 233 (12 July 1362).

⁴⁰ Kew, TNA PRO, C 66/201, membr. 40. See also: *CCR: Edward III*, xi: 1360–1364, 446.

⁴¹ Kew, TNA PRO, C 66/292, membr. 27, and *CPR: Edward III*, xvi: 1374–1377, 81 (10 March 1375).

mentally incapacitated person's mother was often unquestioned as the caregiver and custodian of a mentally incapacitated individual, heir or not. For example, Margaret, the mother of mentally incapacitated John Brewes, acted as his guardian until her death in 1355. From these and other cases, it can be assumed that in some situations the mentally incapacitated were in the custody and care of their families. There was rarely a question as long as they were under the custody of their fathers, but some were not only cared for by but also remained in the custody of their mothers after the death of their fathers without the king's interference.

The mentally incapacitated who did come to the king's attention and had been 'born idiots' (*idiotae a nativitate*) were typically in the care of their parents and normally did not have lucid intervals. If an individual had been born mentally incapacitated, a 'natural idiot' (*idiota natural*), and became a landholder, he might remain in the care of their mother with the blessing of the king until she grew too old to care for the landholder or she died depending on the size of the estate. The example of John Brewes's mother followed this pattern: she remained the executor of his estate until she died, and only then did the crown appoint others as John's guardians. The crown and its administration considered mothers to be competent as custodians of their children's inheritance. One such woman was the mother of Bartholomew de Saukevill. He became mentally incapacitated, 'rendered mentally incapacitated by a blow on the head',⁴² and was placed in the care of his family. His mother, Matilda, was the official guardian of him and his properties in both England and Ireland until 1290 when she became 'too broken by age and infirmity to look after these in the latter country'.⁴³ She remained his guardian in England while Jordan de Evermuwe, a family attorney,⁴⁴ became, at the request of the king, the guardian of Bartholomew's properties in Ireland for two years.⁴⁵ Over a year later,

⁴² Kew, TNA PRO, C 66/110, membr. 4, and *CPR: Edward I*, III: 1281–1292, 446 (21 September 1291).

⁴³ Kew, TNA PRO, C 66/109, membr. 25, and *CPR: Edward I*, III: 1281–1292, 361–62 (11 June 1290).

⁴⁴ Jordan de Evermuwe or Evermuh had a growing connection with the Saukevill family. He may well be a distant relative although the connection is not evident from the records. Bartholomew's father, Jordan de Saukevill, used Jordan de Evermuwe as his attorney in Ireland. See: Kew, TNA PRO, C 66/110, membr. 4, and *CPR: Edward I*, III: 1281–1292, 446 (25 May 1285).

⁴⁵ Walter de Sakevill and his brother John became the *custodiam* of Bartholomew. Kew, TNA PRO, C 66/109, membr. 25, and *CPR: Edward I*, III: 1281–1292, 361–62 (11 June 1290).

in 1291, earlier than his original two-year mark, the king granted custody of Bartholomew and his all of his lands to two other Saukevill relatives, Walter and his brother, John, because Matilda was too old to continue overseeing Bartholomew's affairs realistically.

The king acted not at the point of inheritance, but only after the individual's parents had both died or could not care for the heir's property adequately; the king worked to protect the inheritance. The king and his agents might make note in a post-mortem account that the heir was mentally incompetent. The agents did not necessarily strip the mother of her child's charge and income. The crown officials became involved when a complaint, usually concerning a land holding came before the king, or when the king or an estate began to noticeably lose money. He or his officials would then take action to exert his right as king to name a guardian. When neither parent survived, the king often named a guardian from among family friends. In cases when a person was born mentally incompetent, the king placed him in the care of or someone to whom the crown owed money or from whom the crown wanted service. The king or his officials — sheriffs, judges, escheators, et cetera — placed the mentally incapacitated in wardships with someone the crown wished to favour. After all, the wardship was income: the guardian would ideally protect the lands legally and physically from destruction or erosion, and he could keep a fee for his effort. The major portion of the income generated by these wardships belonged to the king and was used to defray the costs of the expenses of the crown. Someone born mentally incapacitated who had lucid intervals, which was quite rare, would usually have been placed in the custody of family who could not inherit from him or her, or a neighbour. This was true of all those with lucid moments, as well as those who became mentally incapacitated later in life. There were exceptions, of course, when little or no family could be found. In these cases, the king did what he wanted with the wardship of the heir.

In spite of this system of rules governing wardship, exceptions are present in the records. There are a few examples of an heir of a mentally incapacitated landholder actually being granted custody of their mentally incapacitated relative. The crown, of course, would demand the profit in most of these instances, since the heir had not yet inherited. The situation was in every case extreme and had become intolerable, burdensome, or otherwise onerous to the king or his officials, such as in cases of extreme waste of the land, angry tenants, or gentle-born wives and children left in poverty conditions. In cases when the heir of the mentally incompetent person was allowed to inherit early, it was in order to consolidate an estate's income and attempt to fix a financial problem for a family that had fallen into hardship because of a situation with a guardian, ward,

or crown. Often the best answer for the next heir and for the king was to place a competent landholder in charge of the family's holdings. These cases of special conditions highlight the king's involvement rather than that of his officials. Certainly, if allowed to inherit take an inheritance from a living landholder, the new landholder would not owe the crown the profit. This situation was rare and only used in extreme circumstances when the king had been looking for a pragmatic solution, as in the cases of John Brewes or of Robert Barry of Tothale.

Robert became mentally incapacitated as an adult, and his family and guardian situation became complicated by the greed of relatives and neighbours. Robert's condition had gone unnoticed by the king and his officials for many years since he was married and his wife apparently acted as his unofficial guardian seeing to the care of his property once he became afflicted. When the crown became aware of a need for a guardian in the 1360s, it took the normal steps of finding a guardian in part because of the potential danger from Robert's now grown son. The king appointed the guardianship to Robert's sister and her husband, who could not inherit. They turned out to be quite incompetent and greedy; twice they lost the land, once to a group who threw them off illegally, and once because they themselves were found to be wasting the land. As a result, the unusual but highly pragmatic aspect to this case was that the king ultimately made Robert's son and heir his guardian.⁴⁶ Cases like Robert's might have escaped the attention of crown officials, and certainly some must have been overlooked; as long as the tenants remained content and the lands obligations were met by the immediate family, it was not likely the matter would come before the administrative arm of the crown.

Non-Family as Guardians

The king could not always find a relative to act as guardian and had to settle for a close family friend or feudal lord. As discussed earlier, Bartholomew de Saukevill had limited relatives to serve in foreign lands, and so the king sent the family friend and attorney, Jordan de Evermuwe, to Ireland. At other times, family could not be found or, if available, could not legally serve. The king named a family friend as the guardian of Gilbert de Luda's wife, for example,

⁴⁶ *CCR: Edward III*, xi: 1360–1364, 429; Kew, TNA PRO, C 66/260, membr. 30; Kew, TNA PRO, C 66/262, membr. 24 (*CPR: Edward III*, xi: 1358–1361, 543); Kew, TNA PRO, C 66/263, membr. 25d (*CPR: Edward III*, xii: 1361–1364, 69); Kew, TNA PRO, C 66/268, membr. 16d (*CPR: Edward III*, xii: 1361–1364, 450); Kew, TNA PRO, C 66/273, membr. 38 (*CPR: Edward III*, xiii: 1364–1367, 223).

since the inheritance was to be divided among all her living relations, none of whom could then be her guardian. Gilbert de Luda had married Alice sometime around 1278 and later she became mentally unstable ('frequenter mente rapta sui immemor[a] et insane mentis'). In 1278, there had been a murder of a certain Hamo le Graunt who was married to an Alice with whom he had a son, Nicholas, and daughter, Isabella. Alice, Nicholas, and Isabella blamed a group of neighbours including Gilbert de Luda and Thomas de Warthull for Hamo's death.⁴⁷ Later, Gilbert appeared in the records with his wife, also named Alice, and young son, also named Nicholas, who would have been born in 1278.⁴⁸ What, if any, connection would be hard to prove, but the possibility is interesting: Did Gilbert kill his neighbour and marry the man's wife? Was the ten-year-old son of Gilbert and Alice the product of an illicit affair that resulted in a lover's quarrel and the death of her first husband? The names and dates certainly seem to imply that something happened in 1278 to connect them all. Nevertheless, Gilbert died in 1288 leaving his unbalanced wife and ten-year-old son. Thomas de Warthull sued to gain the wardship of Alice, but was denied because he was her brother and her heir.⁴⁹ Gilbert's brothers, Ralph and William,⁵⁰ had become clerks. Often Master William de Luda accompanied Master Henry de Newerk, the king's clerk, archdeacon of Richmond, on the king's business to Rome. Henry later became the dean of St Peter's of York continuing his connection with William, who became first, the dean of St Martin's le Grand in London, and later, the bishop of Ely.⁵¹ Henry de Newerk, as a close

⁴⁷ 'Commission of oyer and terminer [...] to John de Reigate and Alexander de Kirketon, touching an appeal which Alice late the wife of Hamo le Graunt of York, Nicholas his son, and Isabella his daughter, bring in the county of York, against John de Warthull, Thomas his brother, Alice de Bolingbrok, Stephen her son, Elena late the wife of Robert de Clervaus, Gilbert de Luda, Ralph and William his brothers, Roger de Alwaldeley, William de Studdehouse, and Nicholas de Ripon and others for the death of the said Hamo by night in that town'. Gilbert could have already been married to another Alice not in this record, but there is also the possibility that he could have met Alice de Bolingbrok or Alice de Hamo because of this case. Kew, TNA PRO, C 66/107, membr. 4 (*CPR: Edward III*, 1: 1327–1330, 284) (10 January 1278).

⁴⁸ *CIPM*, II: 1–19 *Edward I*, no. 669, p. 409.

⁴⁹ 'Ad peticionem Thome de Wartull' regi est ostensum quod com custodia terrarium et catallorum Alicie de Luda, sororis, [...]'; 'Edward II: Parliament of October 1320, Text and Translation', ed. by Seymour Phillips, in *PROME*, ed. by Given-Wilson and others, item 49 (57) (I, 377). See also Kew, TNA PRO, SC 9/23, membr. 6d.

⁵⁰ *CPR: Edward I*, 1: 1272–1281, 259 (11 February 1278).

⁵¹ *CPR: Edward I*, III: 1281–1292, 354; 'Edward I: Parliament of Easter 1290 (?)', Petitions', ed. by Paul Brand, in *PROME*, ed. by Given-Wilson and others, item 170 (I, 57); see also Kew,

associate and friend of Gilbert's brother, William, was a logical choice by King Edward for Alice de Luda's guardian even though technically he was not family.⁵² He had years of close association with her brother-in-law, he could not inherit, and yet he would have an interest in the matters of the family. In other instances, the king appointed a family friend as guardian if there were no non-inheriting relatives available.

The guardian originally assigned to care for an individual did not always continue in that role. Occasionally wardships were sold; almost always the guardian did none of the actual care giving, but paid others to do this work. Agnes atte Bergh, who began in the care of her mother, inherited in 1375 when her mother died and became a ward of the king, who in turn gave her wardship to Roger atte Chirche. Agnes' inheritance included 'a messuage and 26 acres of land in the hamlet of Berowe in Okested, co. Surrey'.⁵³ The king charged Roger atte Chirche, like many guardians, with finding 'fitting sustenance for Agnes in the keeping of another to whom the inheritance cannot descend by hereditary right, and [to] do no waste or destruction in the premises'.⁵⁴ Roger was not expected to care for Agnes himself, but to find 'another' to care for her excluding only those relatives who might benefit from her demise. Most records only imply that someone else would be caring for the 'idiot', this record is unusual in that it states this outright. It would not be a matter of record as to who ultimately cared for her or what the quality of her care was like, because the purpose of record keeping was to keep track of land possession. It was noted that less than a year later Agnes died ('Thursday after last Epiphany'), her lands transferred to her cousin, Margaret, and her husband, Simon Durant.⁵⁵ Roger atte Chirche's only connection to Agnes was to find someone to care for her

TNA PRO, SC 9/2, membr. 5d.

⁵² Kew, TNA PRO, C 66/107, membr. 4 (*CPR: Edward I*, III: 1281–1292, 301) (24 October 1288); *CIM*, I: 1219–1307, no. 1304, p. 379; 'Edward I: Parliament of Michaelmas 1292', ed. by Paul Brand, in *PROME*, ed. by Given-Wilson and others, item 37 (31) (I, 86–87). See also: *CPR: Edward I*, I: 1272–1281, 302, 310–12; III: 1281–1292, 225, 239, 245, 261, 278, 300, 303, 365, 372, 383, 385–86, and 415.

⁵³ Kew, TNA PRO, C 66/292, membr. 27 (*CPR: Edward III*, xvi: 1374–1377, 81) (10 March 1375).

⁵⁴ Kew, TNA PRO, C 66/292, membr. 27 (*CPR: Edward III*, xvi: 1374–1377, 81) (10 March 1375).

⁵⁵ Margaret was the daughter of John Wylot, son of John Wylot who was brother to Stephen atte Bergh. Stephen was the father of Alice, Agnes's mother. Kew, TNA PRO, C 54/214, membr. 14 and *CCR: Edward III*, xiv: 1374–1377, 305 (3 April 1376).

and make as much profit from her inheritance while it was in his hands, which was a typical guardian-ward relationship.

Some lords took it upon themselves to reclaim 'their' lands from those vassals unable to fulfil their duties. If the king did not find out, the lord could keep the profits from 'his' lands without the 'loss' entailed if the king assumed guardianship. For the most part, the practice of lords retaining their mentally incapacitated heirs' lands had ceased by about the 1320s. William de Hurst of the manor of Bodeketon, as late as the 1360s, tried to control the lands of a mentally incapacitated heir with some degree of success. The mentally incapacitated John Martyn, the brother of Robert Martyn 'the younger', should have received his inheritance of Robert's properties, 'a messuage, 8 acres land, 1/2 acre meadow, with the reversion of 4 acres land and 1 rood meadow held in dower by Denise wife of the said Robert, and of a messuage and 1 acre meadow held by her of the gift of Robert father of the said Robert, all in Putworth'.⁵⁶ The lord, William de Hurst, had maintained the property since the death of John's brother seven years prior, keeping the profit for himself.⁵⁷ In 1369, the king was still investigating as to whether William had the right to this self-made guardianship or whether this wardship belonged to the crown.

Problems with Custody and Guardianships

Evident from the above examples, there were problems with the system of wardship for the mentally incompetent. Those problems fall into three general categories: The first problem was one of indifference on the part of the guardian for the individual and his family causing miscommunication and perhaps an investment in depletion of the property in order to gain personally. The second issue was that guardians generally abused the system in an effort to profit from the guardianship. This second category was often directly correlated with the first and was enabled by the difficulties inherent in record keeping in medieval England. The third category was a disregard on the part of the guardian to 'maintain' the property. This last often happened when a guardian either found he could not get paid for his efforts because the amount due to the Exchequer was too high or because the guardian had granted the lands to someone else and he found much the same or began keeping all of the profit as if the property belonged to him. All of these problems led to the degradation of the property

⁵⁶ *CIM*, III: 1348–1377, no. 747, p. 283.

⁵⁷ *CIM*, III: 1348–1377, no. 747, p. 283. See also: Kew, TNA PRO, C 145/197, membr. 19.

and sometimes a loss of income for the crown as well as the general exploitation of the mentally incompetent individual and his family.

Whether there was one guardian or many, a royal guardian or a member of the family, most relationships between a ward and guardian were distant; some may never have met. In cases where the ward was born mentally incapacitated and he had no lucid moments, he often ended up in the care and custody of a stranger or indifferent relative. Everyone with an interest was concerned about the care and custody of the property and only secondarily about the care of the individual, and then only in so far as his life and welfare affected the ability to control or inherit the property. In fact, it could be to an interested person's advantage to have the mentally incompetent person be questionably sane. To say he was sane in court could stall the judgement allowing time for trespassing relatives and neighbours to collect more profit and, depending on the thoroughness of the justices, even gain them the land.

Abuse of the system was not uncommon. Family and neighbours could be hard on a mentally incompetent individual's estate, but so could guardians. Guardians created many problems, even as they solved issues of land production for mentally incompetent landholders. Wardship records seem laden with abuse cases because that was the courts' preoccupation: they were charged with curbing abuse. Yet, far more guardians were put into place than were ever fined, replaced, or otherwise punished for abusing their position. That does not mean that the court found out every instance of abuse.

Guardians' abuse of wards and their properties took many forms, with some abuses creating more damage than others: general waste of the property, re-granting or selling a wardship as if real property, or swindling a mentally incompetent landholder out of his property. The most common form of abuse was simple mistreatment of the property: selling off movable goods, tools, supplies, or cutting down trees and selling the wood, not repairing damage, overtaxing the peasants, exhausting the land through continuous farming, or even ignoring the property. The most prevalent abuse by guardians was called 'waste' of the property: by not keeping up with repairs, the guardians could keep more money for themselves. This might be overlooked on a short-term basis,⁵⁸ but some guardians held their positions for years, and eventually neglect of the properties would be questioned.

⁵⁸ At times abuse was overlooked as long as it did not interfere with the king's income. It might also be overlooked for a short time as when awaiting trial. In both cases the abuser might be charged with having to replace missing or repair damaged property.

Although it might be prevalent, abuse was not to be tolerated. The king ordered repairs to be performed immediately upon his finding out. He would fine a guardian for his irresponsibility, find an additional guardian, or combine the above. A guardian also could be removed from his position and another guardian assigned in his place. In all cases, the king considered the abuse to be an affront to him and not to the mentally incapacitated person nor to that person's property or family. Consistent with this position, the fine would most likely go to the king. Although repairs would benefit the heir, they also kept the land valuable and this ultimately benefited the king. The other forms of abuse — re-granting or selling a wardship as if real property and swindling a mentally incompetent landholder out of his property — are more complicated. It took far more thought to turn these schemes into abuse, than to sell a few trees as lumber to cover expenses.

Most mentally incapacitated landholders would have had dealings with at least one royal official and, while mentally incapacitated, a guardian appointed by that official. The king was quite serious when he charged a guardian with finding 'the heir food and clothing and maintaining the houses and buildings and other charges on the land';⁵⁹ yet, some guardians had difficulty keeping up the lands of their wards or did not care to keep them, as with John Brewes's step-father, Norman Swynford. Some problems could be alleviated by providing an heir with multiple guardians (for example, John Brewes). Since all actions by the crown were based on information gathered in the community, someone had to report a problem before it could be addressed. Therefore, if more than one guardian were appointed, there was a higher probability that each would check on the others, or at least that the fear of being turned in for 'wasting' a property might deter problems. For instance, it was determined that John Heton, 'after completing his twenty-fourth year has become an idiot' and his lands and goods had been 'occupied and detained by others'.⁶⁰ The king named three men, John Malet, John Shellay, and William Heton, to keep John Heton, his wife, his children, and his lands safe and to provide them with upkeep on the property. It might seem that multiple persons controlling a wardship should cause problems, but quite the opposite was true. Those wardships with more than one guardian had fewer problems; records of wards with multiple guardians do

⁵⁹ Kew, TNA PRO, C 66/266, membr. 32 and *CPR: Edward III, xii: 1361–1364*, 239 (8 August 1362), Ralph de Glendon's (also Clendon) lands.

⁶⁰ Kew, TNA PRO, C 66/240, membr. 19d, and *CPR: Edward III, ix: 1350–1354*, 511 (4 July 1353).

not reappear often in court with disputes. Perhaps they validated one another, providing more assistance and maintenance of the lands, or in collusion with one another, equally cheated the heir.

In another case, typical of wardship abuse, the king gave a commission to his clerk, Geoffrey Aston, to check into the case and determine if a landholder, Roger de Kyngeford, was capable of caring for himself and his property, including all the external duties that went with holding land. Furthermore, Geoffrey was to inquire as to how long Roger had been in this condition: was it 'from his birth or from what time, whether he has lucid intervals and whether he has alienated any lands, what lands still remain to him and who has occupied these and taken the issues and profits of them'?⁶¹ Roger, the son and heir of William de Kyngeford, was found to be an 'idiot' from birth and held lands in Solihull and Bykenhull. In 1368, those lands were in the hands of John Hawe and Robert Cok; in 1360, the king had entrusted them to Sir John Sutton as the guardian. John had obviously re-granted them to Hawe and Cok, who had in some way 'wasted' the lands with John de Sutton still liable. John and another John de Monte Forti had been the official guardians of different portions of Roger's lands the lands for twenty years. Exactment for the damages to the properties was taken 'against John Hawe, Robert Cok, John de Sutton, and John de Monte Forti' to pay for the account.⁶² Both the original guardian and those to whom he re-granted the land had to pay the fines, as well as John Monte Forti to whom the king had jointly enfeoffed the land with John de Sutton, presumably because it was assumed that Monte Forti knew or should have known of the actions of Sutton.

The king transferred the income from and the responsibility of mentally incapacitated landholders to those to whom he owed money. He could not control how the person granted the guardianship would use this 'payment'. Some of the royal guardians had debts of their own to pay and in turn 'sold' their guardianships to pay someone else. The thread of the relationship between the lands of the mentally incapacitated landholder and his heir could be lost when guardianships were sold to others not chosen by the king and who then believed the lands to be their own property and heritable. In one example when Queen Eleanor gave the wardship of Richard Ardern to Alan Walkyngham, the heirs of Richard had to sue to regain their rights in the property.⁶³ Alan had

⁶¹ Kew, TNA PRO, C 66/259, membr. 27d, and *CPR: Edward III*, x1: 1358–1361, 409.

⁶² Kew, TNA PRO, E 149/27, membr. 17, and *CIM*, III: 1348–1377, no. 706, p. 267.

⁶³ Kew, TNA PRO, C 145/201, membr. 14, and *CIM*, III: 1348–1377, no. 840, p. 318.

died and the king had re-seized the property; the heirs had to assert themselves at court making their case known to the king. Other examples tell the same story: William de Passenham's grandson, John de Wydevill of Grafton, had to file suit to get his grandfather's property from the king. It seems that Hugh son of Otto possessed the wardship and sold it to Thomas de Sudynton, in whose care William de Passenham died. Henry, William's brother and heir, had seized the manor but was ejected by Thomas de Sudynton. After his ejection from the manor, Henry prosecuted an assize of *novel disseisin* against Thomas. Once Henry de Passenham and Thomas de Sudynton had died, Thomas, Earl of Lancaster, 'because the manor was held of him as of the honour of Tuttebury, seized it into his hand as chief lord, and retained it until by reason of his rebellion it was seized into the king's hand'.⁶⁴ This type of 'selling' of wardships created much larger problems for future heirs, such as John de Wydeville, to claim an inheritance.

In another example, Thomas Moigne had tried to confuse the documentation of the lands of his royal ward, John Panes, such that Thomas would inevitably gain John's lands. John Panes was 'an idiot from his birth' (*idiot a nativitate sua*),⁶⁵ the heir of Robert and Joan Panes. Thomas was to 'find for the heir fit sustenance in food and raiment and support all charges on the premises'.⁶⁶ Prior to his receiving a guardian, however, John had already disposed of his estate when the king's council judged him to be mentally incapacitated and unable to care for his own property.⁶⁷ This situation left Thomas Moigne in a bind until the court could legally determine whether the new 'owners' had a right to the property. (This could have been the case if John had sold the property during a lucid interval.) Since the people who claimed ownership were collecting the rents that they insisted belonged to them, Thomas Moigne could not get his payment and continued to be owed money by the king. The king had granted the wardship to pay his debt to Thomas; though, even with the king's writ in hand, Thomas did not gain access to the wardship for several years since other people had claimed the lands belonged to them. John's properties included

⁶⁴ Kew, TNA PRO, C 145/89, membr. 5 (esp. sheets 2, 3, 4, and 6 of that manuscript), and CIM, II: 1307–1349, no. 580, p. 146.

⁶⁵ Kew, TNA PRO, C 66/265, membr. 25, and CPR: *Edward III*, XII: 1361–1364, 171 (15 March 1361).

⁶⁶ Kew, TNA PRO, C 66/265, membr. 25, and CPR: *Edward III*, XII: 1361–1364, 171 (15 March 1361).

⁶⁷ Kew, TNA PRO, C 66/265, membr. 31d, and CPR: *Edward III*, XII: 1361–1364, 206 (12 February 1362).

the manors of Laurton by Frome (Somerset co.) and Pomeknoll (Dorset co.) along with the right of patronage to the ecclesiastical office at the church at Pomeknoll. Thomas finally gained control of the properties in February of 1363, but died later in the fall of that year.⁶⁸

Thomas Moigne, knight, deceased and unable to defend himself, came up on charges of having wasted the lands of John Panes. The king's commission investigating Thomas's activities in November 1363⁶⁹ found that Thomas had not wasted the lands, but rather that the executors of John's estate were responsible. According to the commission, the executors had 'driven out the men and tenants thereof, to the king's damage of 40*l.* and the manifest derision of the said John and his heirs'.⁷⁰ The investigations persisted, however, since questions continued to be asked concerning Thomas's involvement in unethical activities surrounding the estate. It seems that he tried to take as much cash out of the lands as possible in the short time he held them. He had transferred the lands to Peter le Whette, 'whom he afterwards caused to refoff him [Thomas] thereof of the inheritance of the said idiot'.⁷¹ This meant that Thomas gave the lands to Peter, who simply re-granted them back to Thomas. Thomas could then charge the tenants a compulsory fee of 6*s.* 8*d.* for simply being their 'new' landlord. Next, Stephen Ledebury took control of the lands explaining quite falsely that he had some right to the land and then Thomas had Stephen 'refoff him [Thomas]' again, giving Thomas the lands back. Each time this type of transaction took place, Thomas charged the tenants the compulsory fee. The king was able to recover the money lost in rents and damages to the property while the lands were in Thomas's hands from the executors of his estate, but the record does not indicate if the king then repaid the tenants or repaired the manors. To secure these lands and the care of John, the king granted the wardship to John Pays⁷² later in November of 1363.⁷³

⁶⁸ Kew, TNA PRO, C 66/267, membr. 28, and *CPR: Edward III*, XII: 1361–1364, 318 (22 February 1363).

⁶⁹ Kew, TNA PRO, C 66/268, membranes 4, 9, and 27d. See also: *CPR: Edward III*, XII: 1361–1364, 448 (1 November 1363).

⁷⁰ Kew, TNA PRO, C 145/188, membr. 12, and *CIM*, III: 1348–1377, no. 552, p. 205.

⁷¹ Kew, TNA PRO, C 145/188, membr. 12.

⁷² Kew, TNA PRO, C 66/268, membranes 4 and 9, and *CPR: Edward III*, XII: 1361–1364, 438 and 430. See also: Kew, TNA PRO, C 66/271, membr. 17, and *CPR: Edward III*, XIII: 1364–1367, 111 (10 May 1365).

⁷³ Kew, TNA PRO, C 66/268, membr. 9, and *CPR: Edward III*, XII: 1361–1364, 430.

A similar case exists in the 1360s of a young woman who had been born in her mentally incapacitated condition, had been cared for by her family while young, and had become an heiress only to be cheated out of her inheritance. The difference in her case was that the crown-appointed guardian who cheated her got caught in the end.⁷⁴ The unanswerable question for the period is, 'How many did not get caught'? In the case of the young woman Joan Wantyng mentioned above, one of her guardians, John Estbury, tried to dupe the king by obtaining a licence to acquire his former ward's lands and almost got away with it. William Wantyng had died leaving his sister and heir Joan, 'who is of the age of twenty-one years and more [and] is an idiot entirely without sense'.⁷⁵ In 1362, Edward III placed Joan in wardship to John Estbury, the escheator in Berkshire. The following year, Walter Wyght, the king's yeoman, was given her wardship without the change being explained.⁷⁶ This case was probably one in which the escheator held the land temporarily while the king's justices investigated the inheritance. In this instance, a 'real' guardian was assigned later who was chosen by the king: Walter Wyght. Ten years later, in 1373, Joan had become the heir, not just of William Wantyng but also John Wantyng and William Harpeden, and had lands in Berkshire and Wiltshire counties. Her wardship now lay with William de Monte Acuto, Earl of Salisbury, who committed her care to Thomas Wynterborn.⁷⁷ Then in 1374, John Estbury tried to have Joan sell her lands to him. The king had her re-examined for competency by John Cavendish and Thomas Ingelby, who were justices; originally, the council had examined her. The justices found that indeed she was 'an idiot,

⁷⁴ Joan Wantyng was an *idiota* from birth and her guardian was John de Estbury. Kew, TNA PRO, C 54/212, membr. 29; Kew, TNA PRO, C 60/195, membr. 9; Kew, TNA PRO, C 66/265, membr. 14; Kew, TNA PRO, C 66/267, membr. 14; Kew, TNA PRO, C 66/289, membr. 5; Kew, TNA PRO, C 66/290, membr. 26; Kew, TNA PRO, C 135/165, membr. 21b; Kew, TNA PRO, C 136/73, membr. 13. See also: *CCR: Edward III*, xiv: 1374–1377, 4; *CFR*, xi: *Richard II, 1391–1399*, 41; *CIPM*, xi: 35–38 *Edward III*, no. 219, p. 189; *CIPM*, xvii: 15–23 *Richard II*, no. 136, p. 61; *CPR: Edward III*, xii: 1361–1364, 186, 340; *CPR: Edward III*, xv: 1370–1374, 379, 418–19.

⁷⁵ Kew, TNA PRO, C 66/265, membr. 14, and *CPR: Edward III*, xii: 1361–1364, 186 (20 March 1362).

⁷⁶ Kew, TNA PRO, C 66/267, membr. 14, and *CPR: Edward III*, xii: 1361–1364, 340 (6 April 1363).

⁷⁷ Kew, TNA PRO, C 66/289, membr. 5, and *CPR: Edward III*, xv: 1370–1374, 379 (14 December 1373).

[and] alienations by her made will be of no worth.⁷⁸ The inquisition concluded that Walter Wyght, her royal appointed guardian, had sold his wardship of Joan back to John Estbury and Katherine, his wife. While she was in the Estbury's care, John had

obtained the king's licence to acquire the premises from her, the king being uninformed by him then of her idiocy, and did so acquire them [the licences] in fee by fine levied in the king's court as if she had been of sound mind, and also the said Joan, being thus in John's keeping.⁷⁹

John convinced her to give up her inheritance to him, his wife Katherine, and his son Thomas. Once informed that Joan was incapable of making such decisions, the king found her a new guardian: 'her kinsman', Thomas Goioun. The crown fined John 20*l.* and pardoned him for 'his trespass, deception and contempt'. The relationship between Joan and her guardians had been distant at best, with Walter selling her wardship, and manipulative at worst, when John and his family tried to cheat her out of her lands. It was often the distance between a guardian and his ward that created abusive conditions.

* * *

In most cases, the loss of the mental capacity of a landholder linked the individual and his family to a guardian and a chain of events in the English legal system intended both to safeguard the person's property and to ensure no loss of value to the crown and community. When possible, the crown capitalized on this situation, using the revenue from the wards' estates to add to the wealth of the crown. The system may have encouraged problems and abuse, yet those mentally incapacitated persons who had guardians did have some protection from greedy family members, over-anxious heirs, and land-hungry lords.

The guardians did preserve, at least to a degree, the inheritance intended for the mentally incapacitated landholders and their children or other family members, even though the landholder's sane wives and children might have fallen under the control of these same guardians. Nevertheless, the emphasis was on preservation of the land and inheritance, not on care of the mentally incapacitated. A few guardians abused their position and ruined their wards'

⁷⁸ Kew, TNA PRO, C 54/212, membr. 29, and *CCR: Edward III*, xiv: 1374–1377, p. 4 (1 February 1374).

⁷⁹ Kew, TNA PRO, C 66/290, membr. 26, and *CPR: Edward III*, xv: 1370–1374, 418–19 (26 February 1374).

lands in an effort to make as much return as possible while the land was in their care. Most guardians, however, took the compensation as offered and turned over the profit to the crown at Easter and Michaelmas regularly.

Guardians were often related to their mentally incompetent wards, but not in every case. Even those related to their wards did not always have contact with the mentally incompetent person. The guardian was to find 'maintenance' for his ward, which meant hiring a custodian out of the funds from the land. The crown paid some guardians for their services in the king's household or administration with the profit from wardships. Other guardians only received a small fee for their efforts on behalf of the king, owing the profit from the land back to the crown in instalments to the Exchequer. Out of the guardians' compensation, they were supposed to pay for the maintenance of the ward and upkeep of the land. The system of wardship made the crown money and was supposed to protect the lands of a mentally incompetent landholder from waste.

MEDIEVAL WARDSHIP ENDS

I will that [under no circumstances is] one [who is an] idiot or fool occupy the said goods, but refuse him and take another that is next, [that] the said name of Baret may continue goodly as long as God vouches safe [for the family].¹

If a man calls me ‘fool’, ‘madman’, ‘lunatic’, ‘niggard’ or ‘glutton’, I will nevertheless not have an action on the case for this. [...] But if a man says to a miller that he is accustomed to take excessive tolls, upon this he will have an action on the case.²

The reign of Henry VI was a difficult chapter in English history. Even when Henry was well, and acting as a king ought, he was losing the war with France, the finances of the country were sliding further toward chaos, and people were generally discontent, to the point of rebellion on at least one occasion.³ Henry’s own mental and physical incapacity, brought on it seems as part of a larger medical problem, did little to help matters.

Following the reign of Henry VI, though the administrative and legal terminology remained the same, social labels attached to the mentally incapacitated grew increasingly negative, and English society rejected the mentally impaired as unwanted elements of the community in the tone of some of their reforms,

¹ ‘But I wil that in no wyse noon ydiot nor fool occupye the seid goods, but refuse hym and take another that is next, [that] the sed name of Baret may contynwe goodly as longe as God wocheaffē’. *Wills and Inventories*, ed. by Tymms, p. 25 (his entire will is pp. 15–44).

² *Select Cases on Defamation to 1600*, ed. by Helmholz, no. 81, p. 76.

³ 1450 was the year of Jack Cade’s rebellion, which took place in London. For more, see Storey, *The End of the House of Lancaster*, pp. 61–68; and Harvey, *Jack Cade’s Rebellion of 1450*, pp. 31–32.

letters, and wills. Henry VI may have come to be invoked as a saint⁴ — people supposing he was an innocent — yet the mentally incapacitated came to embody all that was wrong or could go wrong without clear and rational thinking. This chapter examines the growing trend of late medieval and early modern English society and administration to characterize the mentally and intellectually incapacitated in a negative light; further, it looks at the decline in the use of the institution of wardship for mentally disabled heirs.

At the same time Edward IV was working to strip his ill and feeble-minded relative of the throne, chartered cities were also working to keep mentally incompetent members of their families from inheriting. Many chose to write their mentally incompetent heirs out of any inheritance with the growing use of wills as a way to circumvent any local or royal hold on their lands through legal means.⁵ In chartered cities, property owners had mimicked the royal wardship system by allowing the mayor or other town official of his choosing to have the wardship of mentally incompetent heirs. Guardianship arrangements or a will were methods to express an alternate heir prior to the property owner's death. Another alternative was permanent incarceration, placing the burden of care and custody with an institution.

These institutions, most in or near urban environments, included hospitals, monasteries, and nunneries.⁶ A few hospitals in English cities began to take in the mentally ill⁷ toward the end of the Middle Ages in conjunction with the rise of city populations, and even these institutions had only a handful of mentally ill patients at any given time. Those persons who had violent outbursts accompanying their mental conditions had been incarcerated locally — at home or in a public building such as the church — throughout the Middle

⁴ After his death, Henry was claimed to be responsible for over 170 miracles, mostly miracles of healing, *Henrici VI angliae regis miracula postuma*, ed. by Grosjean, pp. 73, 122–23; *The Miracles of King Henry VI*, ed. by Knox and Leslie; and Peacock, 'King Henry VI'.

⁵ *Wills and Inventories*, ed. by Tymms, 'Preface', pp. vii–xii; Kermade, *Medieval Merchants*, pp. 117–18; and Virgoe, 'Inheritance and Litigation'.

⁶ Rawcliffe, 'The Hospitals of Later Medieval London'.

⁷ See: Andrews and others, *The History of Bethlem*, pp. 116–17. There is a difference in the Middle Ages between the mentally incapacitated and the mentally ill. The mentally ill had one of the mental conditions physicians believed were treatable. Or, they had an illness, which caused a mental affliction in conjunction with that malady, which took the form of mental incapacity, which, again, was a sickness that medieval medicine could attempt to treat. The mentally incapacitated or disabled were, of course, not ill, in the sense that they were not sick in a medieval sense, but rather suffering from a chronic condition affecting their mental health. This division would not be the same today.

Ages to keep them from harm or harming. Nevertheless, the vast majority of the mentally incompetent in medieval and early modern England were cared for at home or within their communities.

The structure for the wardship of the mentally incompetent had functioned for three hundred years without much change. Even the minor changes of Henry VII had little effect on the system as a whole, although, he did introduce a precursor to the Court of Wards in his Council Learned in the Law.⁸ What undermined the system of wardship was the growing use of wills and other legal avenues taken by parents and relatives to keep their mentally incompetent heirs from an inheritance. People in general did not want their estates, often the accumulation of generations, to end up broken or uncared for in the hands of a guardian who had other interests besides the health of the holding or family. Landholders reasoned that a healthy, sane heir would have a better chance at making his way in the political and social world of England; to this end, they began to avoid mentally incompetent heirs unless there was no one else. By the death of Henry VIII, most mentally incapacitated continued to be cared for at home. Those who could afford to hired caregivers to supervise mentally impaired relatives at home. A few with mentally ill or disabled relations placed them in hospitals or other institutions away from home. Some mentally afflicted of the sixteenth century were disinherited, no longer protected by the king.

Henry VI

Henry VI grew up a king with many people around him making decisions.⁹ Those decisions lost England the war with France and the economic stability of England. When Henry was finally old enough to take charge and assert his will as king, he did not.¹⁰ Controversy surrounded the reign of the 'child king,'

⁸ The Court of Wards came into being in the early sixteenth century. Bell, *An Introduction to the History and Records of the Court of Wards and Liveries*, pp. 1–5, 128–29.

⁹ John, the duke of Bedford, brother of Henry V was in charge of the French territories. He was also in charge of England when he was home. Humphrey, the duke of Gloucester, another brother of Henry V, became the Protector and Defender of the Realm and the Church in England. He and Bedford fought about the war. Bishop Henry Beaufort (later Cardinal in 1426), an uncle of Henry V and half-brother of Henry IV, wanted peace with France, especially after Joan of Arc appeared. The earl of Warwick was Henry VI's tutor. Also William de la Pole, the duke of Suffolk, had influence over the young king. See: Wolffe, *Henry VI*, passim; Pollard, *Late Medieval England*, esp. pp. 108–13.

¹⁰ Wolffe, *Henry VI*, pp. 15–21.

or 'fisher king'.¹¹ Whispers began to circulate of something being wrong with Henry. Receiving the news of the loss of several English holdings in France as well as the death of one of his relatives, Henry had a mental and physical breakdown, the cause of which remains unclear.¹² Suddenly, in 1453, England had an ineffectual king, which was not the same as having a child as king, with his supporters and protectors. It was also not the same as having a kind, uninterested, overindulgent king, which was how Henry had behaved until his late thirties. He had been running things more sensibly, with clarity of purpose and effort. He had married, at long last, and his wife was pregnant. It was a shock to everyone when he collapsed, comatose for sixteen months — a silent king, in need of physical aid and incapable of mental activity.¹³

Benet's Chronicle simply said that 'the king became very ill' in July of 1453 and that 'his sickness lasted a long time'.¹⁴ Bale's Chronicle reported, 'the king suddenly became indisposed, his wit and reason withdrawn'.¹⁵ Written long after Henry became ill, these accounts were second-hand glimpses of what might have happened to Henry. Henry was well, blessing the new archbishop and his new son, in January 1455. Yet, by June, Henry again needed medical attention. '[S]ome men are afraid that he [the king] is sick again'.¹⁶ The government might have stood an ill king who could make decisions from his sick bed; they had before.¹⁷ After six more months of Henry being mentally ill, though, Parliament made Richard, Duke of York, 'protector and defender of the realm and church and principal councillor of the king', which would end

¹¹ Rushton, 'The King's Stupor'.

¹² Turner, 'A Cure for the King'.

¹³ Turner, 'A Cure for the King', pp. 186–88.

¹⁴ Benet, *Chronicle for the Years 1400 to 1462*, ed. by Harriss and Harriss, pp. 209–16; *Chronicles of the Wars of the Roses*, ed. by Hallam, pp. 210–16.

¹⁵ *Six Town Chronicles of England*, ed. by Flenley, pp. 140–43.

¹⁶ 'James Gresham to John Paston', 28 October 1455, *The Paston Letters*, ed. by Gairdner, III, no. 303, pp. 48–50. See also: Griffiths, *The Reign of Henry VI*, p. 718.

¹⁷ Edward III became a recluse during his last few years as king. See Lyon, *A Constitutional and Legal History of Medieval England*, p. 90; Waugh, *England in the Reign of Edward III*, pp. 221–22; Turner, 'A Cure for the King', pp. 182–83; and Mortimer, *The Perfect King*, pp. 378–79. Henry IV had a mystery illness, which he kept as quite the state secret, missing parliamentary meetings or other events when he was ill. He did have fits of rage, but managed to recompose himself before too many people got the wrong idea. His main problem seems to have had something to do with his leg; walking became problematic, as did riding a horse. Several scholars have suggested heart disease. Rawcliffe, *Medicine and Society in Later Medieval England*, p. 15; and Hughes, *Arthurian Myths and Alchemy*, p. 47.

‘when Edward, the king’s first-born, arrives at years of discretion’.¹⁸ Parliament assumed that the king would never fully recover and that they would need a provisional leader until baby Prince Edward was old enough to rule.

Henry received the best medical care available; many experts were called in to treat him.¹⁹ He seemed, according to Carole Rawcliffe, to be suffering from ‘lethargy’.²⁰ Henry continued to be ill from time to time, until Edward — Duke of York after his father Richard died and now King Edward IV — executed him in the tower in 1471. Henry was fifty when he died.

Parliament and the council mismanaged Henry and England from the start. The war had not gone well and England was near bankrupt. They had thought, almost too late, to put in someone to run the affairs of state while Henry was ill for the second time, and they chose, not an advocate, but an opponent of Henry’s administration. If Henry had been treated as a normal feudal ward, they would have found someone who could not inherit — Richard, Duke of York, being next in line to the throne after young Prince Edward — to be guardian of the king and kingdom. If they had wanted to preserve the Lancastrians as kings, they should have placed someone with the strength to defend the mentally incapacitated Henry against ‘greedy’ relatives, as a guardian-regent over the king and kingdom. And, perhaps they knew that.

With all the confusion at home with the so-called Wars of the Roses and abroad with the Hundred Years’ War with France coming to an unsatisfying end, wardships of the mentally incapacitated fell in numbers during Henry VI’s reign. It is unlikely that there were fewer incompetent people; rather, the government had other issues on its agenda and was ignoring the fundamentals that might have made them money. John Watts puts forward the interesting argument that the nobles became a conciliar body with a ‘heightened consciousness of their own role in preserving civil authority, not only as the executives or counsellors of the crown, but as its sole components’,²¹ in Henry VI’s reign. After 1453, though, royal justice fell apart. Each noble fought his enemies openly; the ‘inadequacy of royal justice, which drove the lords to help themselves in the shires, made them realize that they had only themselves to look to for help at

¹⁸ *CPR: Henry VI*, vi: 1452–1461 (1910), 153, 159, 226, 273, 278. Highlighted here: 3 April 1454 (p. 159) and 19 November 1455 (p. 273).

¹⁹ *Foedera, conventiones, litterae, et cujuscunque generis acta publica*, ed. by Rymer and others, v, pt 2, p. 55; Rawcliffe, *Medicine and Society in Later Medieval England*, p. 63.

²⁰ Rawcliffe, *Medicine and Society in Later Medieval England*, p. 64. For a list of the physicians and surgeons who attended Henry VI, see p. 94.

²¹ Watts, *Henry VI and the Politics of Kingship*, p. 323.

the centre'.²² Edward IV tried to put it back together, but never again did the noble families completely return to the medieval concept of being deferential toward kingship. And furthermore, the leading English families were not as well off as they once might have been. Some had practically died out in the wars, their properties divided among other families.²³ Bastard feudalism might be to blame, but that does not seem to be the case. It was not the change in retaining followers that did away with wardships of the mentally incapacitated; instead, it was a series of problematic years in which feudal obligations and inheritance lines were interrupted, ignored, or overturned. The families with mentally disabled 'heads', might have actually stood the best chance of coming out of the mid-fifteenth century with their lands intact — if their guardians did not steal anything and everything from the property in their search for money.

End of Medieval Wardship

While Edward IV, Richard III, and Henry VII continued the institution of wardship of the mentally incompetent, their continual suspension and restoration of this institution threw the entire process into periodic confusion and weakened the overall concept of security of the lands in royal wardship. Under the Yorkist kings, new wardships of the mentally incompetent were almost non-existent. When Edward IV took the throne in 1461, he suspended all of the grants and other transactions of the three Lancastrian kings before him, including those of the guardianships of the mentally incompetent.²⁴ Later Edward reversed his actions in 1463 with regard to supporters and family and returned to them certain grants and 'the custody of any idiot (*idiot*), with his lands and tenements'.²⁵ In 1467, Edward again suspended certain grants and

²² Watts, *Henry VI and the Politics of Kingship*, p. 323.

²³ MacFarlane, *The Nobility of Later Medieval England*, pp. 180–82.

²⁴ 'Edward IV: Parliament of April 1461, Introduction' and 'Text and Translation', ed. by Rosemary Horrox, in *PROME*, ed. by Given-Wilson and others, items i, l, n (v, 491). See n. 25 below, and Kew, TNA PRO, C 65/107, membr. 13.

²⁵ 'Provided also that this act [of suspension of grants] shall not extend to any [...] person or persons who are or were in the ward of the king, with the lands, tenements and other profits, and marriage, or marriage or ward of the same person or persons who thus are or were in ward; or of the custody of any idiot, with his lands and tenements. And that the said act shall not extend to any grant made to any of the king's lieges of any lands or tenements of copyhold or of ancient demesne, or of manumission of villeinage.' 'Edward IV: Parliament of April 1463, Introduction' and 'Edward IV: Parliament of April 1463, Text and Translation', ed. by Rosemary Horrox, in *PROME*, ed. by Given-Wilson and others, item 40 (vi, 517).

privileges in an effort to assert his authority, although he included a provision of non-interference with the lands and 'any of them who thus are, were or shall be in wardship, or of the custody of any idiot with his lands and tenements'.²⁶ In the few short years, Edward's brother, Richard III, sat on the throne and almost no records exist for his reign with regard to the mentally incapacitated.

Henry Tudor came to the throne in 1485 with his own ideas and questions about the wardship of the mentally incapacitated. He too suspended the grants of the lands of the mentally incompetent:

[A]ll grants made by any of his progenitors, kings of England, of the custody of any idiot or lunatic (*eny ydeott or eny persone lunatyk*), or of any manors, lands or tenements in which any of his progenitors had interest by reason of any such idiocy or lunacy, shall also be void and of no effect.²⁷

Henry used the suspension and resumption of grants to reaffirm individuals through their grants, individuals such as Thomas Clifford:

[T]his act of resumption or annulment, or any other act made or to be made in this present parliament, shall not be harmful or prejudicial in any way to Thomas Clifford, with regard to any letters patent made to him, or to him and Thomas St Leger, knight, late deceased, by Edward IV late king of England of the custody and keeping of any manors, lands, tenements, advowsons or hereditaments of any idiot (*ydiot*), or belonging to the same king at any time by reason of the idiocy (*idiocie*) of any idiot (*idiot*); but that the same letters patent shall be good and effectual to the said Thomas Clifford, according to their tenor and purport; notwithstanding the said act, or any other act made or to be made in this present parliament.²⁸

²⁶ 'Provided also that this act shall not extend to any grant made by the king to any person or persons of the custody of the heir or heirs that are or were in the king's wardship, with the lands, tenements and other profits, and the marriage or the wardship of the marriage of the same heir or heirs, or of the wardship of any lands, tenements or other profits of the same heir or heirs, or any of them who thus are, were or shall be in wardship, or of the custody of any idiot with his lands and tenements: and that the said act shall not extend to any grant made to any of the king's lieges of any copyhold lands or tenements, or of ancient demesne, or of manumission of villeinage'; 'Edward IV: Parliament of June 1467, Text and Translation', ed. by Rosemary Horrox in *PROME*, ed. by Given-Wilson and others, item 8 (v, 574). Source manuscript is Kew, TNA PRO, C 65/108, membr. 3.

²⁷ 'Henry VII: Parliament of November 1487, Text and Translation', ed. by Rosemary Horrox in *PROME*, ed. by Given-Wilson and others, item 35 (vi, 403). Source manuscript is Kew, TNA PRO, C 65/125, membr. 13.

²⁸ 'Henry VII: Parliament of November 1487', ed. by Horrox, item 35 (vi, 403–06; quotation on p. 406). Source manuscript is Kew, TNA PRO, C 65/125, membr. 14.

Henry wanted to pay his staff, and he paid several with royal wardships. At the same time, Henry also did not want wardships left in the hands of his opponents. Rather than listing the opposition by name, he listed his supporters, publicly confirming allegiance of each and reaffirming his support of them with the confirmation of the grants. Henry took on the role of the gracious and pious king, 'Provided also that this act does not extend to any spiritual person, [...] or to any grant or letters patent concerning any ward or idiot (*idiott*), or the custody of the same, or to any female heir who has inherited by reason of any such grants'.²⁹

Henry VII's interest in the lands of the mentally incompetent did not end with his political uses in parliament; he also took a general accounting of the lands and wardships of the mentally incapacitated. In 1495 he sent a commission of twenty-one men:

[T]o enquire of all the lordships, manors, lands, tenements and advowsons of churches in the counties of Lincoln, York, Leicester, Rutland, Stafford and Derby which ought to belong to the king and are concealed, and of the value thereof; and of all wards, marriages, reliefs, escheats, goods of outlaws, felons and fugitives, forfeitures and concealments of offices, lands given in mortmain, lands in chief acquired of alienated without licence, intrusions upon lands held in chief and acquisitions of lands of Edward IV, Richard III, and natural fools, and to supervise and approve the same.³⁰

Twelve years later he sent a commission of nine to the county of Devon for the express purpose of 'enquir[ing] into the lands of born simpletons (*singulorum fatuorum naturalium*) and of murders and homicides and other offences'.³¹ For the most part, Henry's investigations into the lands of the mentally incompetent were part of a much larger inquiry into the general state of the holdings of the crown. He confirmed the system of wardship for the mentally incompetent, and once again, regularly, the escheators took those lands into the hands of the king.

Boroughs and Cities with Charters

In the parliament of 1487, Henry VII also confirmed the independent nature of grants and laws in cities, towns, and boroughs with charters, implying the

²⁹ 'Henry VII: Parliament of January 1504, Text and Translation', ed. by Rosemary Horrox, in *PROME*, ed. by Given-Wilson and others, item 4 (VI, 525–26). Source manuscript is Kew, TNA PRO, C 65/130, membr. 4.

³⁰ *CPR: Henry VII*, II: (1494–1509) (1916), pp. 33–34.

³¹ *CPR: Henry VII*, II: (1494–1509), p. 546. See also: Turner, 'Town and Country'.

inclusion of all rights concerning the mentally incompetent. Already throughout the fourteenth and fifteenth centuries chartered cities had begun mimicking royal wardship in their dealings with the mentally incompetent.³² For example, in London in 1419, a rule stated that if lands or goods were the inheritance of the mentally incapacitated child of a burgess and the father had not turned his estate over to a guardian prior to his death — implying that he could secure arrangements for the care of the child and his inheritance in the event of his death — the mayor and the aldermen could take the wardship of the child.³³ In Bristol, laws required the relatives of mentally incapacitated persons to ‘provide a guardian for the bodies of such insane person, that no harm or mischief may happen to them and that they do no harm to others.’³⁴ If they had made no provision, the mayor or burgess could step in and make it. In Hereford, if a person was found insane, he was skipped in line for any inheritance in favour of those with more mental capacity.³⁵ The mayor or alderman found the mentally incapacitated a guardian.

Sometime a person’s property would fall near the boundary of a town, or, as in London, jurisdictions might overlap. Although the king did not always take precedence, he did so often. He had more resources at his disposal; nevertheless, he did not want to trample the charter system. In other cases, people with smaller holdings fell outside a chartered city, and yet did not have large feudal holdings. For example, the mentally incompetent Alice Durnegate (*fatua et idiota*) inherited property around the Southampton area, some in free burgage and some in free socage.³⁶ Her most impressive properties were two messuages, beyond that she had a few arable acres and a meadow. Important to the town and local economy, she had three shops. None of this was feudal land, and yet the town did not have a charter, either. The king took her lands and that of others like Alice into his hands and found her a guardian.³⁷ Though her lands were not feudal, it was real property — in other words, she was a free person and these were free holdings, and as such, she was not a serf and was under the king’s law.

³² ‘Henry VII: Parliament of November 1487’, ed. by Horrox, item 35 (vi, 403–04).

³³ *Borough Customs*, ed. by Bateson, II, 155 n. 3, see also, pp. 156–157.

³⁴ *Borough Customs*, ed. by Bateson, II, 150.

³⁵ *Borough Customs*, ed. by Bateson, II, 156–57.

³⁶ For more on free socage and free burgage, see Tait, *The Medieval English Borough*, pp. 106–07, 213–17.

³⁷ Kew, TNA PRO, C 60/168, membr. 15 and Kew, TNA PRO, C 134/54, membr. 11; CIPM, vi: 10–21 *Edward II*, no. 36, p. 12.

Last Will and Testament

In some towns, a will naming a guardian for a mentally incompetent heir or alternate heir was legally acceptable and became more popular with parents or other relatives of the mentally incompetent.³⁸ Wills were used to name both an executor and heirs; in this way, people could legally 'skip' over a mentally incompetent heir and, at the same time, leave some provision for the person's well being and care. It also meant that many more people could leave their goods and lands to the church, especially if they had no heir.³⁹ Parents and other relatives, whether shopkeepers in cities or gentry in the country, turned to making a will when they were aware that the person in line to inherit was mentally incapable of fulfilling the duties associated with an inheritance. Earlier attempts, as explored in previous chapters of this book, varied from selling the inheritance to someone with sense to enlisting the support of family and friends in order to keep crown officials from knowing about a mentally incompetent heir. In cities, the practice of allowing a property holder the ability to choose a guardian or a different heir was put into place much sooner than in the rest of England and may have given landholders the idea to attempt to circumvent the king's hand in the first place.

Many people wanted to assert legally their competency for carrying out an action, a private action, with the will representing their legal authority. To that end, the now famous phrase 'being of sound mind' had its roots in early will writing. John Nottingham of Bury, a grocer in 1437, began his will, 'I John Notyngnam de Bury, the grocer, being of sound mind and good memory' (*sane mente ac bona memoria*),⁴⁰ before writing out the conditions of his bequest. In 1441 Robert, the 'Bishop of Emly [*sic*]',⁴¹ and in 1457 Lady Ela Shardelowe⁴² both also used the phrase 'of sound mind and good memory' at the beginnings of their wills. John Baret of Bury phrased his mental health as of 'good mynde and memorye' and also went on to say many pages later that

³⁸ Chiffolleau, 'Les Testaments provençaux et comtadins'; Swanson, *Church and Society in Late Medieval England*, pp. 173–74, 265–68; Kermade, *Medieval Merchants*, pp. 117–18; and Virgoe, 'Inheritance and Litigation'.

³⁹ Burgess, 'Late Medieval Wills and Pious Convention'.

⁴⁰ *Wills and Inventories*, ed. by Tymms, p. 5.

⁴¹ The diocese of Emly is in Ireland. Robert made his will out and died in Bury St Edmunds, near Norwich: 'In dei nomine Amen. Ego Robertus permissione Diuina Episcopus Imilicenus sana mente ac bona memoria existit'. *Wills and Inventories*, ed. by Tymms, p. 11.

⁴² *Wills and Inventories*, ed. by Tymms, p. 13.

no 'idiot or fool' should inherit 'but refuse him and take another that is next'. He went on to explain his rational that only with sane heirs could the 'name of Baret [...] continue goodly as long as God vouches safe'.⁴³ Baret directed his executor to refuse any heir of unsound mind in favour of any other heir with a sound mind. He implies that to have someone inherit who was mentally incompetent would mean that the 'goodly' name of Baret might not continue as such. The concept of shame in a community has been discussed at length elsewhere,⁴⁴ but the idea works for the mentally incapacitated. The idea that it was an insult to call someone a 'madman' or an 'idiot' carries with it the cultural stigma that must have overlain the treatment of the mentally incapacitated and impaired at the end of the Middle Ages. People in cities did not support the mentally incompetent as heirs; they needed people with sound mental faculties to inherit or manage shops, guild memberships, and businesses.

Hospitals and Bedlam

Throughout the Middle Ages some monastic hospitals took on the care of anyone who could pay, including lepers, the mentally ill, the physically impaired, and pregnant women. Most hospitals, however, only tended the injured, fed the hungry, or cared for travellers.⁴⁵ A small number of hospitals took in the elderly once they could no longer work.⁴⁶ These hospitals or hospices were places of rest or repair for the injured in body or spirit. A few hospitals had physicians on call or a clergyman who studied medicine and could give council.

Hospitals were often connected to a church or monastic complex near the walls of a city.⁴⁷ From early on, some monasteries or churches, especially those with appropriate relics or saints' tombs, saw a constant stream of visitors with mental or physical handicaps. The hospitals in those locations, such as Canterbury with the relics of St Thomas Becket, were kept busy in all seasons⁴⁸

⁴³ *Wills and Inventories*, ed. by Tymms, p. 25 (his entire will is pp. 15–44).

⁴⁴ For example: White, 'The Politics of Anger', pp. 143–44; Butler, *The Language of Abuse*.

⁴⁵ Carlin, 'Medieval English Hospitals', pp. 23–25.

⁴⁶ Rawcliffe, 'The Hospitals of Later Medieval London'; and Rawcliffe, *Medicine for the Soul*. See n. 7 above and also: Cullum, *Cremetis and Corrodies*; Orme and Webster, *The English Hospital*, esp. p. 58; Clay, *The Medieval Hospitals of England*; and *The Hospital in History*, ed. by Granshaw and Porter.

⁴⁷ Carlin, 'Medieval English Hospitals', pp. 23–25.

⁴⁸ There are several images of mentally disabled persons captured in stained glass in England

and began specializing in the treatment of the impaired. Many medieval hospitals that began taking in ill patients also took in those with mental afflictions in conjunction with their illnesses. There were very few, perhaps only Bedlam, who took in patients with ongoing mental conditions, though throughout the Middle Ages hospitals and monasteries here and there had taken on the occasional mentally ill patient. During the Black Death many of the ill died, including those with leprosy, but many healthy people became ill and died from the plague as well.⁴⁹ A few hospitals closed, as did some towns, when there were no people left in those areas.

and these often received disabled visitors. One at least is in Norwich and is of a mad person who is pulling at his hair and being healed by Christ. Two others are at Canterbury Cathedral and are of 'Mad Matilda' and 'Mad Henry of Fordwich'. Matilda is depicted as part of the collection of the 'Becket Miracle Windows'. Her story, according to two accounts written between 1172 and 1180, was that Matilda of Cologne's husband found out about her lover and killed him. She in turn, in a fit of rage, killed her child 'with a single blow of her hand'. She became mentally incapacitated and had a vision of St Thomas telling her to go on pilgrimage. The three windows depict: 1. two men beating Matilda with sticks; 2. as the beating continues, her hands are bound in front of Becket's tomb, a 'beater' is blessed by a monk and another monk reads from scripture; and 3. Matilda genuflects in front of the tomb — hands still bound? — while the beaters lay their sticks on the tomb and a monk prepares a candle. *Miracula Sancti Thomae Cantuariensis*, ed. by Robertson, pt I (William, the Prior of Canterbury from 1175), pp. 137–546; and pt II (Benedict, abbot of Peterborough from 1177), pp. 21–298. These two works do not always agree on the details of Matilda's life or condition. To see the photographs of the windows: Michael, *Stained Glass of Canterbury Cathedral*, Mad Henry is on pp. 112–14, Mad Matilda is on pp. 150–53; she is also on the cover of *Madness in Medieval Law and Custom*, ed. by Turner. My many thanks to Lynne Bowdon and Karen Brayshaw at the Canterbury Cathedral Archives for their assistance with this research. For other stained glass images of medieval mad persons, see French, *York Minster*.

There are also many images of 'fools' in conjunction with Psalms 14. 1 and 53. 1, which begin, 'The fool says in his heart, "There is no God"'. Several of these (mostly) psalter images are included in the wonderful essay on the subject by Kolve, 'God-Denying Fools and the Medieval "Religion of Love"'. Kolve suggests that some of these images are depicting feeble-minded persons, and there is some evidence to support his argument.

⁴⁹ Michel Foucault never fully explains why he concludes that the leper houses emptied at the end of the Middle Ages nor his further suggestions that these empty houses were refilled with the mentally incompetent. He may mean to suggest that following the years of plague, many lepers had died and there was no longer a need for quite so many houses. Yet, he does not mention the plague or how or why he believes that the leper population declined, only that the concept continued in popular memory. His general theory is that every society needs a group to be marginalized, to be shunned, so that the normal core of society legitimizes its hierarchy. There are several problems with this concept as he applies it to 'madness' in the Middle Ages. Importantly for the discussion of the care and custody of the mentally incompetent, Foucault fails to make

In the late fourteenth century, Robert Denton had tried to found a hospital for the mentally ill and had gotten as far as being granted the land and permission to do so.⁵⁰ Yet, his plans did not go forward. By the fifteenth century, a number of hospitals began to take in ill patients, but most avoided the mentally ill. Later with the dissolution of the monasteries, hospitals attached to the monasteries also necessarily closed, and the care of their patients as well as any consideration of reopening the hospital fell to local authorities, families, or wealthy patrons.

The hospitals or monastic communities accepting mentally ill patients were few in medieval England. St John the Baptist in Chester (fl. 1232) took in the poor as well as 'silly persons'.⁵¹ A hospital at Charring Cross took in mentally ill patients.⁵² The Holy Trinity in Salisbury took in the mad (*furiosi*) as well as pregnant women and the sick. The most famous was the Priory of St Mary of Bethlehem's hospital, which was founded in 1247.⁵³ They began taking mentally incapacitated patients around 1377, two years after becoming a royal hospital.⁵⁴ From their location near Bishopsgate, London, St Mary of Bethlehem Hospital took in far more than the average hungry traveller, they saw to the needs of many of the poor, the sick, the injured, and their relatives from London and the surrounding area.⁵⁵ Their foundation seems to have been renewed in 1402 just before they began specializing in the care of the mentally incapac-

a distinction between the religious and literary motif of the fool and those actual persons who were mentally incompetent. Foucault, *Madness and Civilization*, trans. by Howard, pp. 3–37.

⁵⁰ Kew, TNA PRO, C 143/372/14. He wanted to restore the 'frenzierd' (*frenesium*) to 'sane memory' (*sane memoriam*). Also mentioned in Andrews and others, *The History of Bethlem*, p. 82.

⁵¹ Knowles and Hadcock, *Medieval Religious Houses, England and Wales*, p. 351. According to Clay, at the end of the sixteenth century it held two 'idiots'; Clay, *The Medieval Hospitals of England*, p. 34. See also Carlin, 'Medieval English Hospitals', p. 33.

⁵² This may be the first hospital in the London area for the mentally ill and those patients were relocated, it seems, to Bishopsgate at St Mary's of Bethlehem. Andrews and others, *The History of Bethlem*, pp. 58, 82, 115; Clay, *The Medieval Hospitals of England*, p. 32. See also: Knowles and Hadcock, *Medieval Religious Houses, England and Wales*, p. 351 and Carlin, 'Medieval English Hospitals', p. 33.

⁵³ Andrews and others, *The History of Bethlem*, pp. 12, 25.

⁵⁴ Edward III took control of Bethlem sometime in the mid-1370s as part of his seizing of alien properties in order to keep money from going into French hands. Andrews and others, *The History of Bethlem*, p. 58.

⁵⁵ Carol Rawcliffe suggests that a group of 'severely deranged' were transferred from St Martins-in-the-Fields to Bethlehem hospital in the 1370s. Rawcliffe, 'The Hospitals of Later Medieval London', p. 11; see also, O'Donoghue, *The Story of Bethlehem Hospital*, pp. 66–68.

tated in 1403. At that time they had six mentally ill and three infirm patients.⁵⁶ The priory was dissolved, probably with the dissolution of the monasteries in 1538; though, after the foundation, the institution was never referred to as a priory.⁵⁷ Henry VIII saw the need for the hospital and again gave 'Bethlem' royal sanction to continue as an institution dedicated to the mentally incapacitated in 1547 a few months prior to his death. Iron manacles and stocks were listed among the belongings of the hospital,⁵⁸ probably used in restraining mentally incapacitated persons who were a danger to themselves or others. Even among the royal records containing information on the mentally incompetent, restraining by means of chains, ropes, or physical force was mentioned from time to time, but only for those persons who were dangerous. St Mary of Bethlehem Hospital, or 'Bedlam' as it was known by about 1450,⁵⁹ was the first hospital devoted primarily to the care of the mentally incapacitated.

A Shift in Attitude

In 1537, James Hales, a legal writer at Gray's Inn, addressed the legal problem of defamation of character. In essence, he says that if someone calls him names, even horrible names like 'fool', 'madman', or 'lunatic', among others, including racial slurs, he has no recourse in the law against the name-caller.⁶⁰ They were just names after all. But, if someone accused him of cheating at business, that was slander, and he could take legal action against the accuser.⁶¹ The second example, then, was an accusation of cheating, of falsehood, one that could be true — and one that could ruin a reputation. The first example, though, was of simple name-calling. Although it may seem uncouth or even a detriment to be

⁵⁶ Carlin, 'Medieval English Hospitals', p. 34. See also Clay, *The Medieval Hospitals of England*, p. 32.

⁵⁷ Andrews and others, *The History of Bethlem*, p. 68.

⁵⁸ Orme and Webster, *The English Hospital*, pp. 119–20. 'Item. vj cheynes de Iren, com vj lokkes. Item iiij peir manacles de Iren. ij peir stokkys', read an inventory of 1398, which was quoted in a visitation in 1403. As found in Clay, *The Medieval Hospitals of England*, p. 33. Peter Taverner and his wife had stolen various items from the hospital, including, 'a complement of four pairs of iron manacles, five other chains of iron, and six iron chains with locks'. Carlin, 'Medieval English Hospitals', p. 34. See also Andrews and others, *The History of Bethlem*, p. 115.

⁵⁹ Or in a few cases 'St Bethlehem' or 'Bethlem'.

⁶⁰ *Select Cases on Defamation to 1600*, ed. by Helmholz, no. 81, p. 76. This quote is at the beginning of the present chapter.

⁶¹ *Select Cases on Defamation to 1600*, ed. by Helmholz, no. 81, p. 76.

called ‘madman’, the law seemed to have continued to believe that slanderous words could lead to a suit, while name-calling was an expressive liberty.

Throughout the Middle Ages and on into the sixteenth century, false charges of mental incompetence were investigated. The king’s officials held a landholder’s property in royal custody during these investigations in case a person did prove to be a mentally incompetent landholder since the king’s right to profit from a wardship of a mentally incompetent landholder would not be overlooked. These charges brought loss of income and possible respectability in a community. While name-calling was not seen to be a legal issue, the mental competence of a landholder was regarded as a matter for the courts and those being investigated had no recourse except to be tested in court. The crown did not think these types of name-calling activities free speech, however. This was a waste of the king’s resources and the one accusing another of being unfit to govern his property because he was mentally incapable, was liable, fined, and sometime gaoled. For example, in 1362, the king took control of the lands of Hamo de Waltham, supposedly an *idiota*, and in December made a presentation, assigning Denis de Lopham to the church of Stanynghurche in London.⁶² A month later, the king revoked his presentation because Hamo (or *Hamonis* as it is in the second manuscript) was not an idiot and his lands should not have been in wardship; ‘the king was deceived in that grant.’⁶³

Concluding Remarks

Henry I had hoped for the compassionate care of the mentally feeble. From the time of the conquest until about 1250, lords assigned custodians to care for the vassals who were mentally incompetent and their lands. If another in the family had been born with sense, even a younger sibling or cousin, the lord might redirect the inheritance to that ‘sane’ individual. This was a practical decision; it was difficult enough to care for a mentally incapacitated person, much less have that person as a vassal in charge of lands and perhaps other duties.

The early divisions between the *furiosus* — those who raged — and the *non compos mentis* — those who were passively incompetent, held throughout the Middle Ages. Other divisions, implied early on — of birth in such a state, of lucid intervals, of cyclical recurrences — also continued. Before 1250, lords or families of mentally incompetent landholders did at times provide ‘custodi-

⁶² Kew, TNA PRO, C 66/266, membr. 16; CPR: *Edward III*, xii: 1361–1364, 264.

⁶³ Kew, TNA PRO, C 66/266, membr. 5; CPR: *Edward III*, xii: 1361–1364, 277.

ans' to care for such persons and their lands, and mentally incompetent persons with violent tendencies were to have a 'keeper' to watch over them. Yet, the Roman type of tutors and custodians of which the author of *De legibus* wrote did not exist in England until after 1250 with the institution of royal wardship for at least mentally incompetent landholders.

Because retribution could be swift in the early Middle Ages, often the mentally ill and incompetent were put to death before their innocence could be established or even questioned. Those who lived long enough were determined to be innocent because they could not have understood what they were doing: they did not know good from evil. The crimes committed by the mentally incompetent were mostly those of theft. A few became violent, murdering family or friends while raging and not understanding the result of their actions. Those known to have violent outbursts were to have keepers, persons who watched over them and kept them from harm. Those who became violent might be bound until those responsible for them judged them no longer a threat to themselves or others. Suicide, violence against the self, was also forgiven in the cases of mental illness or incompetence; courts determined suicides to be accidental in these cases.

In the fourteenth and fifteenth centuries, there were still violent crimes involving the mentally incompetent. Some of these persons were bound or otherwise kept locked up so that they could not harm others. The majority of the violent crimes, though, were by persons who were temporarily insane because of illness and fever. They most often murdered or injured their family members — children or spouse — and only occasionally harmed those outside the family. All of these persons were found innocent, if their insanity could be verified. Some went on pilgrimage after they were well.

Several mentally incompetent individuals with lucid periods tried to circumvent the king's interference in their lands through non-violent crimes of self-imposed wardship. This worked at times and not at others. The overall effort was an asset to the family, which benefited from the income from the land. These persons were rarely punished, though their lands were taken into the king's hand and a guardian placed in charge of their property and family. If it were others who had done the circumventing, they were fined, and they would not be considered as potential guardians. The lands would have a different guardian and the mentally incompetent individual provided for out of the income.

Few mentally incompetent persons had the wherewithal to comprehend that they needed assistance, much less find it within themselves to arrange it. Yet, a few did arrange for family, friends, and neighbours to assist in times of crisis — those with times of sanity. For the most part, others stepped in both

to judge the competence of that person and to care for the individual and any property that person held. In the twelfth and early thirteenth centuries, it was the king, his council, or a local sheriff or escheator who judged an individual's competence. At times the sheriff took custody of a mentally incompetent person's lands until a hearing was held or a more permanent custodian found by the crown, lord, or family.

By the mid-thirteenth century, mentally incompetent landholders came under the protection and custody of the king. Most investigations of competence began with an escheator questioning the accused individual. Upon occasion, if a person's competence could not easily be determined or much was at stake if the individual were to be found to be incompetent, the individual was sent before parliament, the king's council, or the king to be questioned. Later, he might be sent to the chancellor. During times of crisis, such as the years following the Black Death and those following the so-called Wars of the Roses, the crown used commissions to investigate questions of mental competency and other such queries in an effort to unburden overloaded escheators. For the most part, escheators continued into the sixteenth century to be the primary official to investigate and determine mental competence.

The determination of competence was made based on how well the person might function as a landholder or lord with duties, if applicable. He was asked to perform simple tasks — such as making change, counting coins, giving directions, naming family members and relationships — the basic skills necessary to run an estate. The questions were presumably more difficult if the individual was to be named a knight and lord; these persons were almost always given a guardian if their competence was in any way questionable. The terminology loosely correlated to medical terminology based on behaviour rather than the physiology of the condition — ranging from aggressive to passive for the civil administration and front to back of the brain for physicians.

Over the course of the thirteenth century, the institution of wardship for the mentally incompetent began to change from a familial or lord based one to that of royal prerogative. The king successfully claimed that his rights in the lands of the naturally foolish (*fatui naturales*) and the mentally incompetent (*non compos mentis*) came before those of family and lords. Henry III and the subsequent rulers in the fourteenth and fifteenth centuries used the income from the properties of the mentally incapacitated and incompetent to pay staff, royal debts, and expenses. The king was not to use the income for personal expenses, but the income from such wardships certainly put money into the crown's budget, freeing other money that ultimately could be used for the king's personal expenses.

Shortly after the first wardships in the 1250s and 1260s, a statement outlining the king's rights circulated in England, the *Prerogativa regis*. This statement had two chapters on the care and custody of the mentally incapacitated. According to this statement, if born mentally incompetent, the crown claimed all income and custody of a landholder's property, and if a landholder became mentally incapacitated, the crown could take custody of the land but not the profit. In both cases the land came into the hands of the crown, who appointed a guardian to care for the property. The guardian collected a fee out of the income of the property for his trouble and in that way guardianships were considered valuable.

The legal commentaries of the 1280s bear out the change in the legal status of the mentally incompetent. *Fleta*, *Britton*, and *The Mirror of Justices* all acknowledged the 'recent' change in the custody of the mentally incapacitated. Both *Fleta* and *Britton* mentioned a connection between Robert Walerand and the *Prerogativa regis*, and while no direct evidence exists to say with certainty that Walerand authored the *Prerogativa regis*, several contemporary documents point in that direction. *Fleta*, *Britton*, and *The Mirror of Justices* also examined the issue of the innocence of the mentally incompetent, yet only *The Mirror of Justices* took a religious tact when explaining the inability of the mentally incompetent to discern right from wrong. All three also divided the mentally feeble into two groups: those who were 'natural' or born in a state of mental incompetence and those who became mentally incapacitated later in life. This division echoes the division put forth in the *Prerogativa regis* and seems to be important in the administration records of mentally incompetent landholders. This division determined how the crown could use the lands.

The change that took place from the late 1250s to early 1270s from mentally incompetent landholders being in the hands of their lords or families to being in the hands of the crown became the norm by the time of Edward III. This put more land and income under the control of the king and protected innocent heirs from being skipped over in favour of someone mentally competent. Guardians continued to collect a fee for their efforts on behalf of the mentally incompetent landholder, but many had figured out ways of gaining more than the typical fee. They liquidated movable property, cleared land for the timber price, or kept income that should have gone to the crown. If the income were better than the initially estimated amount, the guardian kept the excess. The crown, though, did make money, from both the lands of those born incompetent and the lands of those who became mentally incapacitated. The crown used the income from the lands to pay officials rather than using liquid assets, circumventing the obstacle of the king personally benefiting from those lands of landholders who became mentally incapacitated.

In the second half of the fifteenth century, parliament and the king's council again had to address the issue of mental incapacity: the incapacity of King Henry VI. Both parliament and the council had been called on from time to time to determine an individual's capacity to function as a landholder; now they were called on to determine what to do about the non-functioning of the king. Yet, 'king' was a special title, not quite like other titles. It indicated a particular person, often born in his station, with multiple functions, some of which he need not be mentally present to 'do'. The spiritual being of the king was still enthroned, even if his physical and mental being had malfunctioned. He was not dead and, therefore, was still crowned. The parliament did what it could legally and appointed a sort of 'guardian', a 'protector and defender of the realm' until Henry's son came of age. Yet, Henry recovered. He continued as king, although weak and prone to recurrences of mental collapse.

Within a few years, Henry was overthrown. In the wake of the mentally incompetent king, subsequent rulers of England allowed more and more families to sidestep mentally incompetent heirs in favour of others with competence, either through wills or other legal arrangements of custody. It seemed impractical and inefficient to have a mentally incompetent individual in the position of landholder: guardians worked hard to scrape as much out of their wards' lands as possible, when competent persons could be actually caring for the land. Henry VII did spend time investigating his rights in the lands of the mentally incompetent and did assume control of these wardships, yet he was more concerned with the lands of his magnates than the lands of the gentry. He used wardships to bolster the holdings and income of his supporters, and made certain that all such holdings in the hands of his opponents were redistributed to those who backed his claim to the throne. He also put more responsibility for small land holdings of the mentally incompetent under local control, giving responsibility for these properties into the care of boroughs, cities, and towns.

* * *

It is remarkable that mentally incompetent landholders were cared for at all much less placed into custody under the king in the later Middle Ages, considering how they could have been treated. The system of wardship for mentally incompetent landholders functioned for well over two hundred years. Henry VIII did little with this institution with his mind on other matters, and only when magnates without other heirs came to the surface or when those who had been functioning magnates became mentally incapacitated did the king step in and appoint a guardian. After St Mary's of Bethlehem hospital and

the Court of Wards began to focus on care and custody of the mentally ill, some of the care of the mentally incompetent shifted from the family or lord to these institutions. Also, with the rise of an urban population, there was less physical space for a community to care for a mentally incompetent individual and institutions such as 'Bedlam' became the practical option. Still, for those families with land and certainly those with a healthy income from their property or business, care for the mentally incompetent continued to be at home, often by the family. Unless a person became violent, they lived in relative comfort in the care and custody of their family, friends, or neighbours.

By the early modern period, many people and their families had figured out ways not only to avoid the king's hand by circumventing the law, but also how to bypass those laws legally. For instance, if an individual had moments of lucidity, he could legally have himself declared sane during a lucid period, sell his property to his heir and in effect give his heir his inheritance early. This could have problematic repercussions but it also avoided the painful loss to the family of the income from the land. The same was true of parents who had mentally incompetent heirs — if they sold the lands out from under their heir, the lands would then be in the hands of a competent heir. With the growing popularity of will writing, this process became even easier. Just as John Baret wanted all 'idiots and fools' skipped in line as his heirs, other will writers did the same, denying mentally incompetent heirs any inheritance, but also denying any right of the king to take possession of his land, unless his heir be a minor. Perhaps at the end of the Middle Ages, in the fifteenth and certainly by the sixteenth century, to call someone a 'madman' was an insult; yet throughout the Middle Ages, though mental incapacity was an unwanted condition, it was not necessarily part of a culture of shame.⁶⁴

The mentally incompetent and incapacitated were cared for throughout medieval English history, mostly by families and, in some cases, by lords or the crown. Those mentally incapacitated who had land were in the custody of others with sense, ensuring the production of the land and fulfilment of the duties associated with the land. From the late thirteenth century on into the sixteenth century, these lands brought income to the crown through the institution of wardship. This income helped offset the expenses from events such as the Hundred Years War and the York-Lancaster troubles later. Wardship of the mentally incompetent meant that these individuals were cared for in some

⁶⁴ Porter, *Mind-Forg'd Manacles*, and Porter, *A Social History of Madness: A World through the Eyes of the Insane*; and Midelfort, *A History of Madness in Sixteenth-Century Germany*.

way because the longer they lived the longer the lands remained in the hands of the guardian and crown. This system of care and custody of mentally incompetent landholders kept the mentally incompetent within the boundaries of society and insured that most were not pushed to the so-called 'fringe'. The royal administrative records of this care and custody provide a window into how society perceived, categorized, and treated the mentally incapacitated of medieval England.

TERMS USED TO DESCRIBE THE MENTALLY IMPAIRED AND DISABLED IN MEDIEVAL ENGLAND

The following definitions are consistent with, and have been checked against, the Latham and Cassell's Latin dictionaries, several other medieval Latin dictionaries, the Latham Medieval Word List, the Hamilton Greek Lexicon, the *Oxford English Dictionary*, and several Anglo-Saxon, Old, and Middle English dictionaries.

This is not a dictionary, but a word list for reference purposes. It reflects the terminology used in medieval England, as I understand the medieval English usage in a medical, legal, and social context; there were other terms beyond those here used in other parts of Europe and Byzantium at this time. The ones listed here figure commonly in the texts used for this study or were referred to in this work. As such, this list has been truncated to the most common meanings and usages of the terminology for the mentally incapacitated. Some of these terms have other meanings beyond those listed here, and those meanings are either not pertinent to this discussion or add shades of meaning that were rarely intended with reference to the mentally incompetent and here would be distracting. That does not mean that at times some of those other meanings might not be important, and if they were important and intended, I included them with the term in the text or notes of this work. The definitions given here are intended to help readers distinguish between the shades of meaning most often intended by medieval scribes.

The following abbreviations are as indicated: English (E), Greek (G), Latin (L), Middle English (ME), Middle French (MF), Medieval Latin (ML), Norman/Law French (LF), Old English (OE), or Old French (OF). The languages indicated may not be the earliest in all texts, but the earliest I have seen them.

a nativitate (+ term) (L) — from birth

ælfádl (ME) — elf-disease

ælf-seóc (ME) — elf-sick, periodic or temporary mental disorder

amens, *-entis* (L) — mad, insane, senseless, demented; [rare: distracted]

amentia, *-ae* (L) — insanity, madness, folly; [usually temporary]

demens, *-mentis* (L) — out of one's mind, insane, senseless; [permanently deranged]; demented

dementia or *demensia*, *-ae* (L) — senselessness, insanity; loss of mental powers, infatuation to the point of paralyzed judgement

deófol-seóc (ME) — devil-sick, a Christianized version of elf-sick indicating periodic or temporary mental dysfunction

depressus (ML) — mentally held down, depressed

diabolica (ML) — influenced by devils or the devil; atrociously wicked or malevolent

dwolic (ME) — to be in a state of delusion, to be mentally astray, distracted; faint

fatuitas (L) — foolishness, silliness; stupidity, idiocy, madness; imbecility, dementia

fatuari, *-uare* (LF) — to be mad

fatue, *-ite(r)* (LF from L *fatuitas*) — foolishly

fatuity (E) — folly, crass stupidity, mental blindness (as in infatuation); (modern) foolish, stupid

fatuosus (L) — foolish; afflicted with idiocy; mad; complacently or inanely foolish; foolish, vacantly silly, stupid; in a state of dementia or imbecility, idiotic

fatuus (L) — foolish, idiotic, silly

fatuus, *-i*; *fatua*, *-ae* (alt.) (L) — a male or female jester, fool

fatuous (E) — foolish, silly, besotted

fol, fole (MF); *folle* (ME from MF) — fool, idiot, imbecile, silly; disorderly; careless
fol nastre (alt.) (L) — natural fool, imbecile from birth

folement (LF) — foolishly

fool (E) — weak-minded person; a person lacking in judgement or prudence

folie, folly (MF) — foolishness

frenesis, phrenesis (L from G) — madness, insanity, overly passionate

frenesie, frenesy (LF) — madness, insanity, frenzy

frenzy (E) — madness, mad movements

frenetic, phreneticus (MF/ML from G) — mad, frantic, insane; mad, madman

frenetik (LF var.)

Furiae, -arum (L) — mythological Furies [all of the following terms ultimately spring from this root and are therefore listed here together]; the deities who sought vengeance for crimes and tormented criminals

furia, -ae (L) — rage, frenzy, madness, passion, fury [esp. with ref. to acute illness]; (ML) (add.) demonic possession

furialis (L) — furious, frenzied, mad; causing madness

furibund(us) (L) — out of one's mind, mad, frenzied; furious, internal rage; like a Fury

furiose (L) — furiously, madly

furiositas (ML) — fury, madness; a state of rage, furiousness

furiosus (L) — raging madman, raving, mad, furious; out of one's mind

furo, -ere (L) — to rage, rave, be mad

furor, -oris (L) — madness, raving insanity; raving madness; fury

hatheortnessa (OE) — hot-heartedness

idiotia (L) — an ignorant, uneducated man; imbecile; having only the common language

idiotia (ME); *ydeota* (alt. ML/ME) — uneducated, ignorant person; a harmlessly deranged person; lacking in common powers of understanding; incapable of coherent speech and of avoiding ordinary hazards and so requires constant care; a person deficient in mental or intellectual faculty as to be incapable of ordinary acts of reasoning or rational conduct; someone who is permanently so afflicted, but has lucid intervals or is expected to recover his reason

ydeotus, ydeota (alt. ML/ME) — idiot, half-wit, fool, jester

idiocia, ydeotia (ML); *idiotia; idiotice* (alt. ML) — idiocy, imbecility; to act foolishly, idiotically; ignorantly

idiot (E from ME from MF) — a feeble-minded person not exceeding the knowledge of three years

idiotic (E) — foolish, unwise; having the nature of an idiot, utterly stupid, senseless, foolish

ignorant; ignorans [from: *ignoro, -are* (L)] (ML) — to be ignorant of, not to know

ignorant malitie (ML) — innocent of malice

ilfig (ME) — mad, elf-touched

imbecile (E) — is incapable of earning a living but can be educated to attend to his simpler wants and avoid ordinary dangers; weak in body or mind; physically impotent; mentally weak of character; lacking will through want of mental power; fatuous, stupid, idiotic; someone who will squander

impos, impotis (L) — having no power over; as in *impotis mentis*

impotens (L) — feeble, impotent; unable to control oneself; violent, uncontrolled, unrestrained

insanus, -a, -um (L) — of unsound mind, mad, insane; (ML) — unwholesome

insane (E) — out of one's mind

insane (L) — madly

insania, -ae (L) — madness, frenzy

insanio, -ire (L) — to be mad, to rage

insanitas, -atis (L) — disease, unsoundness [most of the time 'mental disease']

insanity (E) — without mental health; unsoundness of mind; a mental disorder, excluding mental deficiency; mad, mentally deranged; irrational, utterly senseless, idiotic

insipiens (L) — fool

lunaticus (L), lunatic (E) — a person suffering from lunacy, literally 'moon-sick' or sick with the moon

lunacia (L) — moon-sick

lunacy (E) — insanity interrupted by lucid intervals; changes originally thought to be connected to moon

madde (ME) — mad, crazy, insane, furious

mania (G) — mental derangement with great agitation or excitement, often hallucinations

maniac (G) — a person suffering mental disarray with mania

mente captus (L) — insane, a person who has ‘lost’ his mind

món-seóc (ME) — moon-sick

monafl-sick (ME) — month-sick, episodic and cyclical mental dysfunction

moron (E) — can learn a simple trade but requires constant supervision in work and play

morus, -a, -um (L) — mentally deficient individual

mutus, -a, -um (L) — dumb or mute

naturalis, -e (+ term) (L), *natural* (+ term) (E) — a congenitally feeble-minded person, in said state from birth

natural fool (E) — a person born in a state of foolishness

nec bonum nec malum (L) — [knowing] neither good nor evil

non compos mentis (L) — not having full possession of mental faculties; not mentally competent

non intellectum (L) — without understanding, lacking perception

non sane mentis (L) — not having a healthy mind, not sane

rabidus, -a, -um (L) — mad [mostly animals, as in *rabies*; mad, raging, savage]

rabio, rabere (L) — to be mad

rage, -erie (LF) — madness

reþnes (ME) — in a state of rage

wrath (E) — anger

silly (E) — feeble, pitiable, innocent, helpless, happy

simpleton (E) — is often a term of indulgent contempt and implies silliness or lack of sophistication or normal shrewdness

spiritum maledictum (ML) — evil language of the spirit; verbally abusive, abusive disposition; uncontrollable cursing

stultus (L) — foolish, fatuous, silly, stupid

tempestas (L) — attack, fury, fit

vecors, — *cordis* (L); *vaecors* (alt.) (L) — senseless, foolish, mad, insane

witless (E/ME) — without wits, lacking mental capacity

half-wit (E) — ignorant person; for comparison, see: *idiot*

witléas; *gewitléas*; *gewitleasa* (OE) — without wits, lacking mental capacity

wód, *woda*, *wode*, *wood*; *wéd*, *wéde*; (OE from Old High German: *wuot*) — insane person; [may imply] animalistic behaviour, wildness

dea wodscipe (OE) — goddess of raving

wédan, *wéden*, *wedden*, *wooden* (OE) — to be insane

wód-prág (ME) — a state of frenzy

wód-seóc, *wod-sick* (ME) — periodic or temporary mental disorder

wóðendreám (OE) — an ecstatic fury, mad dream, mad ecstasy

wodewose (ME) — wildman

wodschipe (ME) — a state of madness

wooden (ME) — in a state of insanity

RECORDS OF THE MENTALLY INCAPACITATED IN MEDIEVAL ENGLAND

The following is a list of many of the persons charged in the records as being mentally impaired or disabled. It is a compilation of one of the collections of data created for this study to evaluate persons in wardship, under investigation for crime, or under supervision because actions have placed community safety or land use in question. I have included each name and its major derivations (if any) as it appears in the records with a few minor exceptions. Most names have been kept in their original Latin or the closest English equivalent, such as Johannes and Johann have been changed to John whereas names like Katrina have remained instead of Catherine unless the individual is historically known by the later regularly. The family names are for the most part in their original Latin, for example: Thomas atte Wode has remained instead of the modern Atwood, and Elizabeth le Strange as opposed to the later LeStrange or Lestrangle and Monte Acuto has been preserved over the truncation, Montagu. Following the example of the *Oxford Dictionary of National Biography*, with names containing de, le, and suchlike, I have included them parenthetically if the person was recorded after 1272, since in most cases I could not be certain who had or had not died after 1307.

This list is in no way exhaustive and yet represents a substantive collection of many cases for the period from 1200 to 1500. A few of the dates are approximate but within a year or two; the first appearance or a range of dates is provided for persons who appear in the records for years at a time. The persons

appearing here were recorded in legal and administrative records including such documentation as Chancery records: fine rolls, patent rolls, close rolls, miscellany rolls and post-mortem rolls; court records: the Common Bench, the King's Bench, the Eyre, and Gaol rolls; Exchequer records; and a few wills. Not all of the references collected for each individual have been included here, only those pertaining to his or her mental condition.

Many 'manuscripts' in the The National Archives (formerly the Public Record Office; cited as TNA PRO below) are really a series of documents sewn together either by the Exchequer in the Middle Ages or by the British Record Office as they were organizing them in modern times. Before World War II most medieval and early modern records had been kept in the Tower of London. During the war, officials buried many manuscripts in pits in the moat or moved them to other, safer locations. Later, they reorganized the pieces into groups pertaining to one case. Often the records officers were able to match the request to the answer from the royal official — escheator, court officer, sheriff, etc. — back to the Exchequer. If it was an ongoing case or estate settlement, dozens of pieces may appear in one 'manuscript'. In my evaluation of the terms used to describe mental incompetence, the payments of guardians, and other data, I appraised each piece or document, rather than just collectively evaluating each manuscript. For the terminological study, for instance, I broke down the use per instance into the terms used in each particular document. Many of the cases that have many years of coverage in the records were going on long after the mentally incapacitated individual died. The records were still discussing the individual because his or her lands were being argued over in the courts or finally had become a controversial portion of an inheritance.

Caution should be taken when evaluating certain documents, such as the requests for information from the Exchequer to the escheator, sheriff, or other official out in the country. Just because someone is named in that document as having been suspected of selling his land, wasting her land, murdering his children, or other such problems while *non compos mentis* or *insanus mentis* or because she was an *idiota a nativitate*, does not mean he or she was, only that he or she was to be questioned as to the validity of the accusation. In a few instances, I have even found cases where the court fined the original party who did the accusing for false accusations. Often these individuals put forward the initial investigation because they wanted the lands or their inheritances early or marriage rights or other monetary gains.

I hope that this compilation proves of value to other scholars researching the mentally incompetent, wardship, crime, or law in English society.

Table 3. Dataset of those Recorded or Questioned as Mentally Incompetent in Medieval England, 1200–1500.
The final digits in the citations in the Primary Sources column refer to either membrane or item numbers.

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Adam de Erthe		1257	crime — murder	JUST 1/1109/18	
Adam Wýthemil		1289	land	C 133/55/15	<i>CIPM</i> , iii: 20–28 <i>Edward I</i> , no. 650, p. 512
Agnes (de) Beaumeys		1308	land	C 134/7/10	<i>CCR: Edward II</i> , i: 1307–1313, 90; <i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 84, p. 41
Agnes (de) Bergh	Berowe	1375–76	land	C 54/214/14; C 60/177/6; C 66/292/27; C 135/256/3	<i>CCR: Edward III</i> , xiv: 1374–1377, 304–05; <i>CFR</i> , viii: <i>Edward III</i> , 1369–1377 (1924), 376; <i>CIPM</i> , xiv: 48–51 <i>Edward III</i> , no. 243, p. 252; <i>CPR: Edward III</i> , xvi: 1374–1377, 81
Agnes (de) Burley		1306	crime — murder	C 260/16/24b	
Agnes Coullwath		1420	land	E 149/120/1	<i>CIPM</i> , xxi: 6–10 <i>Henry V</i> , no. 693, p. 237
Agnes (de) Gousle		1320	ill 25	C 134/65/11	<i>CIPM</i> , vi: 10–21 <i>Edward II</i> , no. 246, pp. 146–47
Agnes Prat		1386–1406	land	C 136/40/4; C 137/52/10	<i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , no. 275, p. 103; <i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , no. 14, pp. 3–4
Agnes Sherlok		1385	land		<i>CIM</i> , iv: 1377–1388, no. 348, p. 188
Agnes (de) Wýrseye		1306	crime — murder	JUST 1/159/3d	
Alan Bykedon		1351	land	C 135/106/5	<i>CIPM</i> , ix: 21–25 <i>Edward III</i> (1916), no. 432, p. 343

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Alice (d. of John) Brown		1400	land	C 1/50/72;	
				C 1/50/73;	
				C 1/50/74;	
				C 1/50/75	
Alice Durnegate		1317	land	C 60/115/6;	CFR, II: <i>Edward II, 1307–1319</i> (1912), 319; CIPM, VI: <i>10–21 Edward II</i> , no. 36, p. 12
				C 133/46/2;	
				C 134/54/11	
Alice Fyssh (Saltby)		1464	land	E 149/214/3	CIM, VIII: <i>1422–1485</i> (2003), no. 352, p. 201
Alice Gaudi		1248	land		<i>The Roll and Writ File of the Berkshire Eyre of 1248</i> , ed. by Clanchy, no. 237, p. 105
Alice & Emma Giffard (mother & daughter)		1276–77	land	C 133/16/2;	CIPM, II: <i>1–19 Edward I</i> , no. 205, p. 126; CIPM, II: <i>1–19 Edward I</i> , no. 237, p. 141
				C 133/17/20	
Alice of Louth	Luda	1288–1318	land	C 66/107/4;	CPR: <i>Edward I</i> , II: <i>1281–1292</i> (1893), 301; 'Ed. I: Plt Michaelmas 1292' in <i>PROME</i> , item 37 (31); 'App. for Roll 5' in <i>PROME</i> , item 37; 'Ed. II: Plt Oct. 1320' in <i>PROME</i> , item 49 (57); 'Ed. II: Plt Oct. 1318' in <i>PROME</i> , item 126
				C 256/1/8/210	
Alice Parker		1299	ill	C 133/92/3.1–2	CIPM, III: <i>20–28 Edward I</i> , no. 547, pp. 422–23
Alice (de) Warewyk		1339	suicide		<i>Calendar of Coroners Rolls</i> , ed. by Sharpe, no. 18, p. 249
Alicia wife Johannus Maynard		1240	crime — murder	JUST 1/818/48d	

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Amy Brumman		1281	crime — murder	C 260/2/41b	
Andrew de Buriton	Andreas	1255	crime — murder (of keeper)	JUST 1/300c/23	
Andrew (de) Merk		1276	land	C 60/74/22 (top)	CFR, i: <i>Edward I, 1272–1307</i> , 76–77
Bartholomew Sakevill		1290–1309	land	C 66/109/25; C 66/110/4; C 134/13/1	CIPM, v: <i>1–9 Edward II</i> , no. 149, p. 79; CPR: <i>Edward I</i> , ii: <i>1281–1292</i> , 362, 446
Berraya le Strange	Lestrangle (modern)	1280	land	SC 8/45/2243	
Berrreda de Albo Monasterio		1280	land	C 60/78/9	CFR, i: <i>Edward I, 1272–1307</i> , 127–28
Carnalit		1386	victim	KB 9/167/8	
Christina Goloffre		1404	land	E 149/83/12	CFR, xii: <i>Henry IV, 1399–1405</i> , 287; CIPM, xviii: <i>1–6 Henry IV</i> , no. 1012, p. 351
Christina Spilman	Spellman	1417	land	C 138/25/20	CIPM, xx: <i>1–5 Henry V</i> , no. 709, p. 222
Clarice Bouker	Brouker	1403–11	land	C 137/35/26; C 137/82/28	CIPM, xviii: <i>1–6 Henry IV</i> , no. 744, p. 245; xix: <i>7–14 Henry IV</i> , no. 834, p. 298
Drew de Henle		1256	murder	C 66/70/13	CPR: <i>Henry III</i> , iv: <i>1247–1258</i> , 471
Dun (William's son)		1309–11	land	C 60/108/11; C 60/109, m 8	CFR, ii: <i>Edward II, 1307–1319</i> , 52, 90

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Edith Rogers		1396	drowned		<i>Select Cases from the Coroners' Rolls</i> , ed. by Gross, pp. 49–50
Edmund Mordaunt		1372–80	crime — murder & suicide	C 258/17/26; C 258/20/31	<i>CIPM</i> , xiii: 44–47 <i>Edward III</i> (1954), no. 270, pp. 244–46
Edward Legat		1397	land	C 136/93/4	<i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 853, p. 313
Elias, vicar of Christow	Cristenestowe	1288	crime — murder	C 260/10/16b–c	<i>CCR: Edward I</i> , ii: 1279–1288, 514
Elizabeth le Strange	Lestrangle (modern)	1492	land	KB 27/922/5 Rex –(Hil. 7 Hen VII)	
Elizabeth Polglas		1396	land	C 145/255/22; E 149/64/13	<i>CIM</i> , vi: 1393–1399, no. 85, pp. 40–41, no. 127, pp. 59–60; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 700, p. 268
Elizabeth Tresyllan		1439	land	C 60/246/24	<i>CFR</i> , xvii: <i>Henry VI</i> , 1437–1445 (1937), 54
Emma (de) Beston		1378	land	C 145/228/10	<i>CIM</i> , iv: 1377–1388, no. 227, pp. 125–28
Emma Hereward		1251	murder	C 66/62/6	<i>CPR: Henry III</i> , iv: 1247–1258, 100
Emma Wode		1306	crime — murder	JUST 1/467/7	
Eustacia Heselarton	Percy	1350–67	land	C 66/232/4; C 54/205/m15	<i>CCR: Edward III</i> , xii: 1364–1368 (1910), 340; <i>CPR: Edward III</i> , xi: 1350–1354, 19
Geoffrey Friday		1301	land		<i>CPR: Edward I</i> , iii: 1292–1301, 622; 'Ed. I: Hilary Plt 1301', in <i>PROME</i> , App., item 12
Geoffrey (de) Gasconia		1297	crime — arson	C 260/10/23	

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Geoffrey Luterel		1259–69	land	C 66/74/14; C 66/84/25; C 66/88/27	<i>CIPM</i> , i: <i>Henry III</i> , nos 604 and 611; <i>CPR: Henry III</i> , v: 1258–1266, 58, 564; <i>CPR: Henry III</i> , vi: 1266–1272, 392
Geoffrey Riche	(Galfrus) Galfridus fit Adem de	1257	crime — murder	JUST 1/1109/18	
Geoffrey Whytingham		1292–1311	land	C 60/90/5; C 60/108/6; C 134/14/11	<i>CFR</i> , i: <i>Edward I</i> , 1272–1307, 313; <i>CFR</i> , ii: <i>Edward II</i> , 1307–1319, 61; <i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 179, p. 92
Geoffrey (de) Wychingham		1292	land	JUST 1/409/34	
George Tailboys		1499– 1500+	land	C 66/584/(13) 8; C 142/31/41; PROB 11/10 (24 Vox)	<i>CPR: Henry VII</i> , ii: 1494–1509, 176–77
Gervase Frechevyle	Frecheville	1400	land	C 1/11/33; C 139/45/32; E 149/145/7.1–2	<i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), ed. by Noble (2004), no. 3, p. 193
Gilbert (arte) Hale		1373	land	C 135/223/18	<i>CIPM</i> , xiii: 44–47 <i>Edward III</i> , no. 143, pp. 114–15
Gilbert (de) Iselbek		1300	land		<i>CPR: Edward I</i> , iii: 1292–1301, 501; ‘Ed. I: Lent Plt 1300’, in <i>PROME</i> , App., item 7
Gilla (de) Blackburn		1306	crime — murder	JUST 1/422/1d	

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Goda Arcobek		1276	crime — murder	JUST 3/125/10	
Hamo (de) Waltham		1362	falsely accused — sane	C 66/266/5; C 66/266/16	<i>CPR: Edward III</i> , xii: 1361–1364, 264, 277
Henry (de) Appelford		1405	land	C 137/52/15	<i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , no. 20, p. 5
Henry (atte) Waye		1399	land	C 137/22/19.1–3	<i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 367, p. 115
Henry Brumman	Bruneman	1297–98	crime — murder	C 260/11/1a	<i>CCR: Edward I</i> , iv: 1296–1302 (1906), 143
Henry Chambre		1487–90	land	C 1/88/46; C 66/565/(24) 4	<i>CPR: Henry VII</i> , i: 1485–1494 (1914), 158
Henry Fraunkelayn		1358	land	C 145/176/13	<i>CIM</i> , iii: 1348–1377, no. 280, p. 97
Henry Holewelle		1290	land	C 133/58/11	<i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 795, p. 485
Henry Stanlake		1290	land	C 256/1/8/254	
Henry de Yuehust		1236	crime — theft	JUST 1/775/ m 18	
Hugh Groos		1382	land	C 145/227/4; E 149/47/5; E 149/47/5	<i>CIM</i> , iv: 1377–1388, no. 88, p. 106, no. 210, p. 116
Hugh (de) Mysyn Grene, Grone	Hugo (de) Grene, Grone	1278–81	crime — murder	C 145/36/46; JUST 1/664/37 Rex	<i>CIM</i> , i: 1219–1307, no. 220, p. 595; <i>CCR: Edward I</i> , i: 1272–1279, 518, 525

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Hugo (de) Kynardeslepe		1292	crime — suicide	JUST 1/303/67	
Hugo de Loges		1269	land	KB 26/193/17d	
Ida de Crekton		1272	crime — during (?) childbirth	JUST 1/736/40d	
Isabell le Fader		1232	crime — theft	JUST 1/62/5	
Isabella Pampesworth		1321	suicide		<i>Calendar of Coroners Rolls</i> , ed. by Sharpe, no. 4, pp. 36–37
James (de) Ardern	Arderna	1285	crime — murder	C 145/44/36; JUST 1/780/17d	<i>CIM</i> , i: 1219–1307, no. 2275, p. 608; <i>CCR: Edward I</i> , ii: 1279–1288, 334
James Nicoll	Jacobus Nicol	1494	land	C 66/575/(34) 3	<i>CPR: Henry VII</i> , i: 1485–1494, 473
James (de) Rochester		1285	land	JUST 1/246/45	
Joan (drowns in Thames)		1322	property		<i>Year Books of Edward II</i> , ed. by Maitland and others, xxvii: <i>The Eyre of London, 14 Edward II (1321)</i> , ed. by Cam (1968), 93
Joan (de) Chyvene		1360	land	C 135/141/33	<i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 483, pp. 382–83
Joan Coke		1359–1401	land	C 66/256/13; C 137/29/76	<i>CPR: Edward III</i> , xi: 1358–1361, 189; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 539, pp. 179–80
Joan (de) Conyngesholm		1313	land	C 134/24/16	<i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 317, p. 181

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Joan Fanconberg		1463	land	C 140/11/33	
Joan Hayme		1393	falsely accused — sane	C 136/79/11	<i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 276, pp. 124–25
Joan Jordan	Spencer	1399–1412	land	C 136/109/13; C 136/109/2; C 260/125/11a	<i>CIM</i> , vii: 1399–1422 (1968), no. 199, pp. 97–98; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , nos 1315–16, pp. 509–10, no. 1328, p. 519
Joan Poyndyngdon	[<i>CIPM</i> reads: 'son of Nicholas']	1433–47	land	C 60/240/10	<i>CFR</i> , xvi: <i>Henry VI</i> , 1430–1437, 148; <i>CFR</i> , xviii: <i>Henry VI</i> , 1445–1452 (1939), 76–77; <i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), no. 608, p. 321
Joan Preus	Pratellis	1256–73	land	C 66/85/(7) 6; C 66/92/4	<i>CPR</i> : <i>Henry III</i> , v: 1258–1266, 458; <i>CPR</i> : <i>Henry III</i> , vi: 1266–1272, 109–10, 665; <i>CCR</i> : <i>Edward I</i> , i: 1272–1279, 30
Joan Tremollou		1399	land	C 145/272/10	<i>CIM</i> , vii: 1399–1422, no. 11, p. 8
Joan Wantyng	Wantenge	1362–92	land	C 54/212/29; C 60/195/9; C 66/265/14; C 66/267/14; C 66/289/5; C 66/290/26; C 135/165/21b; C 136/73/13	<i>CCR</i> : <i>Edward III</i> , xiv: 1374–1377, 4; <i>CFR</i> , xi: <i>Richard II</i> , 1391–1399, 41; <i>CIPM</i> , xi: 35–38 <i>Edward III</i> , no. 219, p. 189; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 136, p. 61; <i>CPR</i> : <i>Edward III</i> , xii: 1361–1364, 186, 340; <i>CPR</i> : <i>Edward III</i> , xv: 1370–1374, 379, 418–19
Joan Yeo	Yes	1410	land	C 137/78/34; C 260/122/20; E 149/94/16	<i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , no. 741, p. 266

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Joan (atte) Yo Slowe		1419	land		<i>CFR</i> , xiv: <i>Henry V</i> , 1413–1422 (1934), 259
Johanna de la Heye		1253	land		<i>Close Rolls</i> : <i>Henry III</i> , vii: 1251–1253, 479
Johanna Pointyngton		1332	land	C 140/19/12	
Johanna Pontefract		1298	land		<i>Select Cases in the Court of King's Bench</i> , ed. by Sayles, iii: <i>Under Edward I</i> , no. 39, p. 66
Johannes Soliz		1320	land	JUST 3/49/1/40	
John Alyn	Aleyn	1391	land	C 140/74/21	<i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , no. 1039, p. 421
John Argent		1343	crime — murder	C 66/209/31; C 260/53/59b	<i>CPR</i> : <i>Edward III</i> , vi: 1343–1345, 15
John Basco		1313	land	C 134/28/15	<i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 374, p. 209
John Bauchon		1340	crime — murder	C 260/51/15	
John Beneit		1290	crime — murder	C 66/109/6	<i>CPR</i> : <i>Edward I</i> , ii: 1281–1292, 390
John Berrelot		1405–07	land	C 60/211/12; C 60/213/26; C 137/51/57	<i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 1186, p. 409; <i>CFR</i> , xiii: <i>Henry IV</i> , 1405–1413, 28, 88
John (de) Berghdon		1396–1430	land	C 138/6/6; C 139/121/10; E 149/66/12; E 149/105/8	<i>CIM</i> , vi: 1393–1399, no. 167, p. 79; <i>CIPM</i> , xx: 1–5 <i>Henry V</i> , no. 147, pp. 48–49

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John (de) Bernacastell		1382	falsely accused — sane	C 136/29/12	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 895, p. 353
John (atte) Berton		1345–54	land	C 60/145/ m 30 —(cancelled); C 66/242/7	<i>CFR</i> , v: <i>Edward III</i> , 1337–1347, 410–11; <i>CPR</i> : <i>Edward III</i> , x: 1354–1358, 44–45
John Besevill		1380	falsely accused — sane	C 136/11/6	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 290, p. 117
John (de) Brampton		1375	land	C 54/213/39; C 135/240/3	<i>CCR</i> : <i>Edward III</i> , xiv: 1374–1377, 127; <i>CIPM</i> , xiv: 48–51 <i>Edward III</i> , no. 72, p. 72
John Bretoun	Breton	1368–92	land	C 136/65/6; E 149/29/7	<i>CIM</i> , iii: 1348–1377, no. 749, p. 283; <i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , no. 957, p. 379
John (de) Brewes	Breouse	1348–68	land	C 54/199/24d; C 54/199/26; C 66/245/12d; C 66/253/3; C 66/256/9; C 66/268/20; C 66/271/37; C 135/89/24; C 135/129/18; C 135/137/19; C 135/204/13; SC 8/33/1642	<i>CCR</i> : <i>Edward III</i> , xii: 1364–1368, 273; <i>CPR</i> : <i>Edward III</i> , x: 1354–1358, 235–36, 646; <i>CPR</i> : <i>Edward III</i> , xi: 1358–1361, 189, 197, 273; <i>CPR</i> : <i>Edward III</i> , xii: 1361–1364, 416; <i>CPR</i> : <i>Edward III</i> , xiii: 1364–1367, 82; <i>CIPM</i> , ix: 21–25 <i>Edward III</i> , no. 102, p. 89; <i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 390, pp. 318–20; <i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 211, pp. 189–93; <i>CIPM</i> , xii: 39–43 <i>Edward III</i> (1938), no. 271, p. 255; <i>Rotuli parliamentorum</i> , ii, 436a; 'Ed. III: Plt 1365', in <i>PROME</i> , App., item 7

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John Broughton		1452	land		<i>CFR</i> , xviii: <i>Henry VI</i> , 1445–1452, 254, 256
John Bryt	Birt	1384–1430	land	C 60/200/15; C 60/237/35; C 136/73/2; C 136/91/1; C 139/44/25.1–2; C 145/233/8; C 145/249/22	<i>CFR</i> , x: <i>Richard II</i> , 1383–1391 (1929), 56–57; <i>CFR</i> , xi: <i>Richard II</i> , 1391–1399, 215; <i>CFR</i> , xv: <i>Henry VI</i> , 1422–1430, 276; <i>CIM</i> , iv: 1377–1388, no. 283, pp. 161–62; <i>CIM</i> , v: 1387–1393 (1962), no. 334, pp. 192–93; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 113, pp. 50–51, no. 744, p. 278; <i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), nos 362–63, p. 188
John (de) Capella	Capello	1279–1288	Crime — murder	JUST 1/924/73d; KB 27/45/18d	
John Chapman		1496	land	C 66/590/(11) 26	<i>CPR</i> : <i>Henry VII</i> , ii: 1494–1509, 38, 272
John Chillenden		1429	land	E 149/143/4	<i>CIM</i> , viii: 1422–1485, no. 39, p. 20
John Cofe	Coof	1358–1364	land	C 66/255/26; C 135/141/32; C 135/169/6; C 145/176/4	<i>CIM</i> , iii: 1348–1377, no. 281, p. 97; <i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 482, p. 382; <i>CIPM</i> , xi: 35–38 <i>Edward III</i> , no. 302, pp. 239–40; <i>CPR</i> : <i>Edward III</i> , xi: 1358–1361, 101
John Coryr		1413	land	C 138/1/13	<i>CIPM</i> , xx: 1–5 <i>Henry V</i> , no. 15, p. 4
John (de) Danthorp		1293–1302	land	C 60/100/6; C 66/112/12; JUST 1/135/15	<i>CFR</i> , i: <i>Edward I</i> , 1272–1307, 458; <i>CIPM</i> , iii: 20–28 <i>Edward I</i> , no. 640, p. 508; <i>CPR</i> : <i>Edward I</i> , iii: 1292–1301, 22
John Draper		1405–10	land	C 145/283/9	<i>CFR</i> , xiii: <i>Henry IV</i> , 1405–1413, 173; <i>CIM</i> , vii: 1399–1422, no. 295, p. 159

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John (de) Dychtron		1286	land	C 133/46/2	<i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 611, pp. 373–74
John Eyr		1331–36	land	C 60/131/22;	<i>CFR</i> , iv: <i>Edward III</i> , 1327–1337 (1913), 244, 311, 479;
				C 60/132 m 15;	<i>CIPM</i> , vii: 1–9 <i>Edward III</i> , no. 396, p. 297, no. 406, p. 302
				C 60/136 m 18;	
				C 135/30/6;	
				C 135/31/4	
John Faceby		1455	land	E 101/624/46;	
				SC 8/28/1371	
John Faytour de Weston		1376	crime	JUST 3/158/11d	
John FitzHerbert		1315	pretending		<i>Rotuli parliamentorum</i> , i, 320b; 'Ed. II: Plt Jan. 1315', in <i>PROME</i> , item 180 (144)
John Flannndrey		1288	land	JUST 1/213/2	
John Gerard	Johann,	1251	land		<i>Close Rolls: Henry III</i> , vii: 1251–1253, 177
	Johanne				
John Gernet		1359	land	C 145/180/9	<i>CIM</i> , iii: 1348–1377, no. 365, p. 130
John Gibbons		1508	land	C 66/604/(8) 19	<i>CPR: Henry VII</i> , ii: 1494–1509, 551
John Godston		1497–98	land	C 66/581/(10) 36;	<i>CIPM</i> , ser 2, ii: 13–20 <i>Henry VII</i> (1915), 76–77;
				PROB 11/11 (18 Horne)	<i>CPR: Henry VII</i> , ii: 1494–1509, 124
John Goscelyn		1316–19	land	C 60/114/1;	<i>CFR</i> , ii: <i>Edward II</i> , 1307–1319, 288;
				C 134/52/5	<i>CIPM</i> , vi: 1–9 <i>Edward II</i> , no. 620, p. 415

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John Grendon		1446	land	C 44/29/10d; C 145/312/8	<i>CIM</i> , viii: 1422–1485, no. 192, p. 113
John Haddock		1327	land	C 60/127/22	<i>CFR</i> , iv: <i>Edward III</i> , 1327–1337, 23
John Hardyng		1411	land	C 137/84/39	
John Harpesfeld	Harpisfeld	1415–30	land	C 138/17/74; C 139/43/13/1–2; E 149/104/5; E 149/145/1	<i>CIPM</i> , xx: 1–5 <i>Henry V</i> , no. 494, p. 156; <i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), no. 340, pp. 179–80; <i>CIM</i> , viii: 1422–1485, no. 46, pp. 21–22
John Helier		1380–1419	land	C 138/37/20; C 145/221/12	<i>CIM</i> , iv: 1377–1388, no. 104, pp. 64–65
John Herdewyk		1421	land	C 138/61/63	<i>CIPM</i> , xxi: 6–10 <i>Henry V</i> , no. 856, p. 307
John Hereward	Wheler	1444	land	C 60/251/5	<i>CFR</i> , xvii: <i>Henry VI</i> , 1437–1445, 293; <i>CFR</i> , xviii: <i>Henry VI</i> , 1445–1452, 90
John (de) Herst		1311	falsely accused — sane	C 54/129/30	<i>CCR: Edward II</i> , i: 1307–1313, 367
John (de) Heron		1353–55	land	C 66/240/19d; C 66/245/13; C 135/125/25	<i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 142, p. 132; <i>CPR: Edward III</i> , ix: 1350–1354, 511; <i>CPR: Edward III</i> , x: 1354–1358, 200–01
John Hispania	Ispania	1285	land		<i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 591, pp. 349–50; <i>Select Cases in the Court of King's Bench</i> , ed. by Sayles, ii: <i>Under Edward I</i> (1938), no. 49, pp. 120–22
John (de Bymbirle) Hoch		1286	land	JUST 1/572/66d	

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John Hood		1401	land	C 137/29/75	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 538, p. 179
John Husee		1480	land	C 140/74/3	
John de Inteberwe		1259	land	C 66/73/2	<i>CPR</i> : <i>Henry III</i> , v: 1258–1266, 46
John Jot		1376–89	land	C 66/294/8; C 136/55/6	<i>CPR</i> : <i>Edward III</i> , xvi: 1374–1377, 294; <i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , no. 705, p. 268
John Kendale		1399	land	C 145/272/10	<i>CIM</i> , vii: 1399–1422, no. 11, p. 8
John Kyng		1451–55	land	E 149/192/16	<i>CIM</i> , viii: 1422–1485, no. 227, p. 143; <i>CFR</i> , xix: <i>Henry VI</i> , 1452–1461 (1940), 65, 70, 87, 130
John Lyndhirst		1342–43	land	C 135/67/12.1–3; C 60/143/10	<i>CFR</i> , v: <i>Edward III</i> , 1337–1347, 338; <i>CIPM</i> , viii: 10–20 <i>Edward III</i> , no. 404, pp. 276–77
John (del) Marche		1293	Crime — murder	C 260/7/46b	
John Martyn		1369–1400	land	C 137/15/64; C 145/197/19	<i>CIM</i> , iii: 1348–1377, no. 747, p. 283; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 224, p. 68
John Maye		1309	land	C 134/13/15	<i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 163, p. 87
John (de) Norton		1301–60	land	CP 40/153/77d; CP 40/160/263d; JUST 1/1320/23d; JUST 1/1320/66d	
John Noth		1284–91	land	C 133/40/8a–b; CP 40/86/118; CP 40/87/107d; JUST 1/572/46d	<i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 542, p. 329

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John (de) Panes		1362–81	land	C 60/165/7;	<i>CFR</i> , vii: <i>Edward III</i> , 1356–1369, 295;
				C 66/265/25;	<i>CIM</i> , iii: 1348–1377, no. 552, p. 205;
				C 66/265/31d;	<i>CIPM</i> , xi: 35–38 <i>Edward III</i> , no. 405, pp. 319–20;
				C 66/267/28;	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 255, p. 105;
				C 66/268/4;	<i>CPR</i> : <i>Edward III</i> , xii: 1361–1364, 171, 206, 318, 430, 438, 448;
				C 66/268/9;	<i>CPR</i> : <i>Edward III</i> , xiii: 1364–1367, 111
				C 66/268/27d; C 66/271/17 C 135/173/9; C 136/10/2; C 145/188/12	
John Pary		1380	land	C 136/5/14	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 133, p. 51
John Pengelle		1507	land	C 66/605/(17) 15	<i>CPR</i> : <i>Henry VII</i> , ii: 1494–1509, 571
John Penros (the younger)		1447	land	E 149/183/16	<i>CFR</i> , xviii: <i>Henry VI</i> , 1445–1452, 67–68; <i>CIM</i> , viii: 1422–1485, no. 204, p. 123
John Pereson	Person	1473	land	E 149/227/2; C 66/566/(13) 1	<i>CIM</i> , viii: 1422–1485, no. 422, p. 230; <i>CPR</i> : <i>Henry VII</i> , i: 1485–1494, 178
John Pipard		1333–34	land	KB 27/215/28; KB 27/217/12d; KB 27/218/70d; KB 27/218/100; KB 27/220/98	
John Porter		1502	land	C 66/591/(10) 14	<i>CPR</i> : <i>Henry VII</i> , ii: 1494–1509, 299

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John Potesmore		1430–46	land	C 139/121/7; C 145/304/14; E 149/147/12	<i>CIM</i> , viii: 1422–1485, no. 53, p. 26; <i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), no. 607, p. 321
John Powtrell (chaplain)	Powtrell	1485–6	land	C 43/1/55; C 66/562/(4) 22; KB 27/900/2 Rex –(Trin. 1 Hen VII)	<i>CPR</i> : <i>Henry VII</i> , i: 1485–1494, 44
John (de) Radenore		1307	crime — murder	JUST 1/746/8d (cancelled & rewritten)	
John Rawlyn		1429	land	E 149/143/ no 20.1	<i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), no. 324, p. 174; <i>CIM</i> , viii: 1422–1485, no. 40, p. 20
John Roger		1374–80	land	C 136/5/19; C 145/205/12	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 138, p. 53; <i>CIM</i> , iii: 1348–1377, no. 944, pp. 357–58
John Romesye		1299	ill	C 133/92/4	<i>CIPM</i> , iii: 20–28 <i>Edward I</i> , no. 548, p. 423
John (de) Shurlfston		1281	land	JUST 1/186/32	
John (de) Slavelay		1308	land		<i>CCR</i> : <i>Edward II</i> , i: 1307–1313, 73
John Staynford		1384	land	C 145/233/9	<i>CIM</i> , iv: 1377–1388, no. 284, p. 162
John Styne		1309–10	land	C 54/127/25; C 134/14/2	<i>CCR</i> : <i>Edward II</i> , i: 1307–1313, 166; <i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 170, p. 90
John Sulgene	Salgena	1384	land	C 145/231/10	<i>CIM</i> , iv: 1377–1388, no. 271, pp. 149–50
John Taverner		1490–98	land	C 66/584/(5) 16	<i>CIPM</i> , ser. 2, ii: 13–20 <i>Henry VII</i> , 84–85, 171, 480–81
John Thorneholme		1476	land	C 66/581/(16) 30	<i>CIPM</i> , ser. 2, ii: 13–20 <i>Henry VII</i> , 127

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John Thurnum		1497	land	C 66/580/(12d)	16d CPR: <i>Henry VII</i> , ii: 1494–1509, 118
John Thymolby		1427	land	C 60/234/7; C 60/235/21; C 139/36/61.1-2; E 152/6/260/27	CFR, xv: <i>Henry VI</i> , 1422–1430, 180, 192; <i>CIPM</i> , xxii: 1–5 <i>Henry VI</i> (1422–27) (2003), ed. by Parkin, nos 838–39, pp. 742–44; <i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), no. 131, p. 77
John Tremayne		1506	land	C 66/600/(18) 6	CPR: <i>Henry VII</i> , ii: 1494–1509, 485
John (le) Viscunte		1400	land	DL 25/2115	
John Vowe		1480	land	C 140/76/62	
John Wacelyn	Waceleyn [in <i>PROME</i>]	1295–1315	land	C 60/100 m 10; C 133/104/10; JUST 1/1307/4; JUST 1/1325a/26	CFR, i: <i>Edward I</i> , 1272–1307, 454; <i>CIPM</i> , iv: 29–35 <i>Edward I</i> , no. 78, p. 46; <i>Rotuli parliamentorum</i> , i, 325b–26a; 'Ed. II: Pt Jan. 1315', in <i>PROME</i> , item 220
John Walerand		1291–1379	land	C 60/100/4; C 66/111/29; C 66/123/13; C 66/126/18; C 66/128/12; C 134/11; C 134/12; CP 40/104/17; SC 6/1090/4; SC 9/12/2	CCR: <i>Edward II</i> , i: 1307–1313, 33–34, 168–69; CFR, i: <i>Edward I</i> , 1272–1307, 459; <i>CIPM</i> , iv: 29–35 <i>Edward I</i> , no. 457, pp. 340–43; <i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 148, pp. 70–79; CPR: <i>Edward I</i> , ii: 1281–1292, 462; CPR: <i>Edward I</i> , iv: 1301–1307, 155, 371, 525; <i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 166, pp. 67–68
John Warre		1350	land	C 66/230/26d	CPR: <i>Edward III</i> , viii: 1348–1350, 525

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
John (de) Welyngton		1396–1412	land	C 60/200/22; C 60/204/21; C 60/206/8; C 60/217/6; C 136/96/1; C 137/86/25; E 149/97/11	<i>CFR</i> , xi: <i>Richard II</i> , 1391–1399, 198–203; <i>CFR</i> , xii: <i>Henry II</i> , 1399–1405, 31–32, 134; <i>CFR</i> , xiii: <i>Henry IV</i> , 1405–1413, 246; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , nos 937–49, pp. 344–48; <i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , nos 946–51, pp. 337–39
John (de) Westcote		1334–37	land	C 60/136/1; C 60/137/40; C 135/47/6; C 145/123/32	<i>CFR</i> , iv: <i>Edward III</i> , 1327–1337, 508; <i>CFR</i> , v: <i>Edward III</i> , 1337–1347, 3; <i>CIM</i> , ii: 1307–1349, no. 1363, p. 334; <i>CIPM</i> , viii: 10–20 <i>Edward III</i> , no. 42, p. 16
John Wourton		1425	land	C 139/21/13.2	<i>CIPM</i> , xxii: 1–5 <i>Henry VI</i> (1422–27), no. 557, p. 519
Jordan (de) Wrydewelle		1282	crime — murder	C 260/2/25	<i>CCR: Edward I</i> , ii: 1279–1288, 151
Juerta Rousing		1317	land	C 134/46/35	<i>CIPM</i> , v: 1–9 <i>Edward II</i> , no. 584, pp. 371–72
Katerina Ronges	Catherine (trans.)	1371	land		<i>Select Cases from the Coroners' Rolls</i> , ed. by Gross, pp. 46–47
Katharine Whitehed		1498	land	C 66/581/(27) 19	<i>CPR: Henry VII</i> , ii: 1494–1509, 133
Katherine Metcalfe		1464	land	C 140/15/48	
Katherine (de) Rypers		1290	land	CP 40/82/45d	
Lottis Lych		1293	accidental death	JUST 1/806/22d	

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Lucy Brygge		1385	falsely accused — sane	C 136/30/2	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , pp. 357–58
Lucy (de) Meinill	Branceston	1275–94	land	C 60/92/20	<i>CFR</i> , i: <i>Edward I</i> , 1272–1307, 335; <i>CPR</i> : <i>Edward I</i> , i: 1272–1281, 106
Margaret Anlatheby		1279–89	land	C 133/23/18; C 133/54/12	<i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 333, p. 193, no. 728, p. 449
Margaret Colle		1377	land	C 54/218/14; C 54/218/30; C 145/214/4	<i>CIM</i> , iv: 1377–1388, no. 21, p. 18
Margaret (de) Colonia		1367	land	C 145/192/19	<i>CIM</i> , iii: 1348–1377, no. 654, pp. 242–44
Margaret Talbot		1309	crime — murder	C 260/20/9b	
Mariota Stoyle		1299	feeble body	CP 40/129/75; CP 40/129/78	
Matilda Levyng	Maud	1284	crime — murder	C 260/3/19; JUST 1/46/3d	<i>CPR</i> : <i>Edward I</i> , ii: 1281–1292, 146; <i>CCR</i> : <i>Edward I</i> , i: 1272–1279, 206
Matill(da) (wife of Ralph) Carson		1248	crime — murder	JUST 1/909A/m27	
Mathew Whitfeld		1492	land	C 66/572/(31d) 6d	<i>CPR</i> : <i>Henry VII</i> , i: 1485–1494, 400
Maud (d. of Henry)		1256	murder	C 66/70/5	<i>CPR</i> : <i>Henry III</i> , iv: 1247–1258, 491
Maud (de) Marlecomb		1392	land	C 136/74/4	<i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 147, p. 67
Nicholas Barail		1369	land	C 135/194/5	<i>CIPM</i> , xii: 39–43 <i>Edward III</i> , no. 147, pp. 124–26

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Nicholas (de) Glamorgan		1342–62	land	C 60/142/12; C 60/143/12; C 60/143/13; C 60/156/10; C 66/226/11; C 66/239/13; C 66/239/23; C 66/240/13; C 66/264/31; C 66/265/8; C 135/67/17; C 135/113/7.2; C 135/170/24; SC 8/13/609	CCR: <i>Edward III</i> , xi: 1360–1364, 317; CFR, v: <i>Edward III</i> , 1337–1347, 296, 333, 335; CFR, vi: <i>Edward III</i> , 1347–1356, 433; CIPM, viii: 10–20 <i>Edward III</i> , no. 713, pp. 518–19; CIPM, xi: 35–38 <i>Edward III</i> , no. 335, p. 266; CIPM, ix: 21–25 <i>Edward III</i> , no. 660, p. 444; CPR: <i>Edward III</i> , viii: 1348–1350, 224; CPR: <i>Edward III</i> , ix: 1350–1354, 9, 407, 425, 487; CPR: <i>Edward III</i> , xi: 1361–1364, 93, 195
Nicholas (de) Prestthorp		1319	land	C 134/58/16	CIPM, vi: 10–21 <i>Edward II</i> , no. 100, p. 67
Nicholas Stut (of Bray)		1310	crime — murder	C 66/134/4; C 260/21/10b; C 260/3/19	CPR: <i>Edward II</i> , i: 1307–1313, 304
Nicholas Thomas (bro. Earl of Desmond)		1359	land	C 66/257/19	CPR: <i>Edward III</i> , xi: 1358–1361, 246
Nigel Coppedene		1306	crime — murder (vet)	C 260/16/5; JUST 1/934/3	CPR: <i>Edward I</i> , iv: 1301–1307, 416
no name (King's court)		1370	land		<i>Select Cases of Trespass from the King's Court</i> , ed. by Arnold, i, p. lii

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
no name (Trinity)		1212	land		<i>Placita corone</i> , ed. by Kaye, no. 113, pp. 66–67
Peter Chaumpenceys		1305	land	C 54/122/3; C 133/120/4	<i>CCR: Edward I</i> , v: 1302–1307, 299; <i>CIPM</i> , iv: 29–35 <i>Edward I</i> , no. 326, pp. 222–23
Peter Seyvill		1286	land	C 133/46, m 2	<i>CFR</i> , v: <i>Edward I</i> , 1272–1307, 230; <i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 611, pp. 373–74
Philip Stageman	Stratheman	1316	land	C 260/25/no. 2	
Philippa (de) Hacche		1342	land	C 54/173/16; C 145/148/6	<i>CIM</i> , ii: 1307–1349, no. 1803, p. 448
Ralph (de) Bolomere		1352	land	C 66/235/1d	<i>CPR: Edward III</i> , ix: 1350–1354, 208
Ralph (de) Clendon	Glendon	1358–1395	land	C 54/201/40; C 60/159/12; C 66/266/32; C 66/266/36; C 135/169/5; C 136/83/8	<i>CCR: Edward III</i> , xi: 1360–1364, 446; <i>CFR</i> , vii: <i>Edward III</i> , 1356–1369, 68; <i>CIPM</i> , xi: 35–38 <i>Edward III</i> , no. 301, p. 239; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 454, pp. 188–89; <i>CPR: Edward III</i> , xii: 1361–1364, 233, 239
Ralph Damyot		1318–20	land	C 60/117/11; C 60/117/13; C 134/62/4	<i>CFR</i> , ii: <i>Edward II</i> , 1307–1319, 377, 384; <i>CIPM</i> , vi: 10–21 <i>Edward II</i> , no. 173, p. 100
Ralph de la Halt		1261	land	KB 26/171/11d	
Ralph (de) Lasceles	Ralfe	1305	land — Scotland	C 47/22/9/126; C 66/125/14; SC 8/10/454; SC 8/10/456	<i>Rotuli parliamentorum</i> , i, 471b; <i>CPR: Edward I</i> , iv: 1301–1307, 320; ‘Ed. I: Plt Autum 1305’, in <i>PROME</i> , petition item 419 (390) and item 427 (397)

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Ralph Punchard		1401	land	C 137/29/74	<i>CIPM</i> , xviii: 1–6 <i>Henry II</i> , no. 537, p. 179
Ralph Pyrot		1305	falsely accused — sane	C 133/120/3	<i>CIPM</i> , iv: 29–35 <i>Edward I</i> , no. 325, p. 222
Ralph Silksrone	Silkston, Raldulfus de; Ralf	1218–9	crime — murder		<i>Rolls of the Justice in Eyre [...] for Yorkshire</i> , ed. by Stenton, no. 526, p. 211
Ralph Toldyso de Dusgerk		1380	land	KB 27/475/33 Rex	
Ralph Trelewith		1300	land	C 133/98/9	<i>CIPM</i> , iii: 20–28 <i>Edward I</i> , no. 614, p. 492
Ralph (de) Vautort		1278	land	KB 27/31/20d	'Ed. I: Coll. of Petitions, ca. 1278,' in <i>PROME</i> , item 66 (63) [Easter 1277?]
Richard Ardern		1276–79	land	C 54/96/4; C 60/73/3; C 66/98/6; CP 40/24/61; CP 40/28/63	<i>CCR: Edward I</i> , i: 1272–1279, 540; <i>CFR</i> , v: <i>Edward I</i> , 1272–1307, 74; <i>CPR: Edward I</i> , i: 1272–1281, 328
Richard (de) Bachesworth		1301–10	Land		<i>CCR: Edward II</i> , i: 1307–1313, 209; <i>CIPM</i> , iv: 29–35 <i>Edward I</i> , no. 68, p. 43
Richard (del) Boche		1299	Crime — murder	C 260/11/27b	
Richard Brenre	Brent	1500–53	land	C 66/861/5; C 142/96/64	<i>CPR: Edward VI</i> , v: 1553 (<i>with Appendix</i>) (1926), 253; <i>Placita corone</i> , ed. by Kaye, no. 113, p. 119

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Richard Cause		1479	land	C 140/71/49	
Richard (de) Cheddestan		1276	crime — murder	C 145/34/59	<i>CIM</i> , i: 1219–1307, no. 2202, p. 589
Richard Eshewra		1384	land	C 145/230/1	<i>CIM</i> , iv: 1377–1388, no. 250, p. 138
Richard Hynton		1399	land	C 136/103/3	<i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , nos 1164–65, p. 421
Richard Lenyet	Levyot	1400–01	land	E 149/77/19	<i>CFR</i> , xii: <i>Henry IV</i> , 1399–1405, 102; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 545, p. 181
Richard of Neussom		1252	land	KB 26/147a/10	
Richard de Newhus	Neuhus	1253	land	C 66/64/6	<i>CPR</i> : <i>Henry III</i> , iv: 1247–1258, 206
Richard Person		1400–79	land	C 1/16/415; C 260/154/20	
Richard Perys		1430–31	Land	C 60/237/9; C 60/238/6; C 139/42/70; E 152/6/260.13	<i>CFR</i> , xv: <i>Henry VI</i> , 1422–1430, 325; <i>CFR</i> , xvi: <i>Henry VI</i> , 1430–1437, 44; <i>CIPM</i> , xxiii: 6–10 <i>Henry VI</i> (1427–1432), no. 304, p. 160
Richard (le) Pessoner		1285	crime- murder	C 145/44/40	<i>CIM</i> , i: 1219–1307, no. 2279, pp. 609–10
Richard Polglas (son of Elizabeth, above)		1388–96	land	C 54/288/6; C136/52/15; C 145/236/11	<i>CIM</i> , iv: 1377–1388, no. 364, p. 193; <i>CIM</i> , vi: 1393–1399, no. 127, pp. 59–60; <i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , no. 608, p. 232

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Richard Preston		1400–73	land	C 1/54/177; C 66/564/(4) 21; E 149/227/4	<i>CIM</i> , viii: 1422–1485, no. 423, p. 230; <i>CPR: Henry VII</i> , i: 1485–1494, 112
Richard Russel		1282	crime — murder	C 260/2/30; JUST 1/181/31d	<i>CPR: Edward I</i> , ii: 1281–1292, 20
Richard Sharp		1313	crime — homicide	JUST 3/74/3	
Richard Thowe		1493	land	C 66/572/(13) 24	<i>CPR: Henry VII</i> , i: 1485–1494, 371
Richard Thurborn of Brent		1225	crime — theft		<i>Select Pleas of the Crown</i> , ed. by Maitland, no. 187, p. 119
Richard (de) Umfraville		1279	land		<i>Select Cases in the Court of King's Bench</i> , ed. by Sayles, i: <i>Under Edward I</i> , no. 38, pp. 49–50
Richard Upton		1256	crime — suicide		<i>The Roll of the Shropshire Eyre of 1256</i> , ed. by Harding, no. 798, p. 276
Richard Walerand?		1302	land		<i>CFR</i> , i: <i>Edward I</i> , 1272–1307, 459
Richard Warris		1460	land		<i>CFR</i> , xix: <i>Henry VI</i> , 1452–1461 (1940), 261
Richard Wolverston		1387	land	E 150/607/20	
Robert Angot		1310	crime — murder	C 260/20/27b	
Robert Barry (son of Robert son of Simon Barry)	Tothale	1366	crime		<i>CIM</i> , iii: 1348–1377, no. 635, pp. 235–36

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Robert Barry (son of Simon Barry)	Tothale	1360	land	C 66/260/30;	<i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 492, pp. 388–89, no. 664,
				C 66/262/24;	p. 557;
				C 66/263/25d;	<i>CPR: Edward III</i> , xi: 1358–1361, 429, 543;
				C 66/268/16d;	<i>CPR: Edward III</i> , xii: 1361–1364, 69, 450;
				C 66/273/38;	<i>CPR: Edward III</i> , xiii: 1364–1367, 223;
Robert Chelworth		1478	land	C 135/143/6	<i>CIM</i> , iii: 1348–1377, no. 635, pp. 235–36
				C 140/65/20	
Robert (de) Clipston		1300	crime — murder	C 66/120/26;	<i>CPR: Edward I</i> , iii: 1292–1301, 493
				C 260/12/46	
Robert (de) Corbrigge		1333	land	C 135/34/4	<i>CIPM</i> , vii: 1–9 <i>Edward III</i> , no. 491, p. 349
Robert Dura		1285	crime — theft	JUST 1/244/27	
Robert Edmund		1287	land	JUST 1/283/12d	
Robert fitz Neel		1350–59	land	C 60/151/20;	<i>CFR</i> , vi: <i>Edward III</i> , 1347–1356, 252, 402, 403, 407;
				C 60/155/8;	<i>CIPM</i> , ix: 21–25 <i>Edward III</i> , no. 589, pp. 409–10;
				C 60/155/10;	<i>CPR: Edward III</i> , viii: 1348–1350, 533;
				C 66/230/4d;	<i>CPR: Edward III</i> , x: 1354–1358, 172, 217, 256;
				C 66/245/5;	<i>CPR: Edward III</i> , xi: 1358–1361, 273
				C 66/245/28;	
				C 66/246/17;	
				C 66/257/3;	
				C 135/111/7;	
				SC 6/963/16	

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Robert Fole		1437	land	C 145/306/15	<i>CIM</i> , viii: 1422–1485, no. 89, pp. 47–48
Robert Gregory	Roberti Geg'	1252	land		<i>Close Rolls: Henry III</i> , vii: 1251–1253, 32
Robert Justise		1374–1411	land		<i>CFR</i> , xiii: <i>Henry IV</i> , 1405–1413, 225–26; <i>CIPM</i> , xiii: 44–47 <i>Edward III</i> , no. 244, pp. 225–26
Robert Langhurst		1393	land	C 136/72/5	<i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 75, p. 37
Robert Launder		1371	land		<i>CIPM</i> , xii: 39–43 <i>Edward III</i> , no. 399, p. 386
Robert de Pureshull		1252	land		<i>Close Rolls: Henry III</i> , vii: 1251–1253, 120; <i>CLR</i> , iv: <i>Henry III</i> , 1251–1260 (1959), 59
Robert son of Robert Tothale — see: Robert Barry (son of Robert Barry son of Simon Barry)	Barry	1360 — 66	crime		
Robert son of Simon Tothale — see: Robert Barry (son of Simon Barry)	Barry	1366	land		
Robert Stace		1421	land	C 138/55/1c	<i>CIPM</i> , xxi: 6–10 <i>Henry V</i> , no. 699, p. 239
Robert Tillioll		1434–36	land	C 60/242/7; C 60/243/12	<i>CFR</i> , xvi: <i>Henry VI</i> , 1430–1437, 231, 277–78
Robert Vylers		1351	land	C 66/233/18	<i>CPR: Edward III</i> , xi: 1358–1361, 61

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Robert Walerand		1279–1307	land	C 66/98/22; C 66/101/21; C 66/110/23; C 66/128/37; C 133/121/12.4–5; C 260/186/4b	<i>CIPM</i> , iv: 29–35 <i>Edward I</i> , no. 352, p. 233; <i>CPR: Edward I</i> , i: 1327–1330 (1893), 86, 304; <i>CPR: Edward I</i> , ii: 1330–1334, 4, 413; <i>CPR: Edward I</i> , iv: 1301–1307, 492; 'Ed. I: Easter Plt 1278', in <i>PROME</i> , App., item 3; 'Ed. I: Plt Lent 1305, Petitions', in <i>PROME</i> , item 19 (39)
Robert Webbe (de Wrabenalle)		1374 (–87?)	crime — murder	JUST 3/164/52	
Roger, of Tadcourt		1219	crime		<i>Rolls of the Justice in Eyre [...] for Lincolnshire [...] and Worcestershire</i> , ed. by Stenton, p. 248
Roger Blik		1248	land		<i>The Roll and Writ File of the Berkshire Eyre of 1248</i> , ed. by Clanchy, no. 440, pp. 186–87
Roger Kemys (esquire)		1481–82	land	C 140/60/16; C 140/80/28; E 149/244/7	<i>CIM</i> , viii: 1422–1485, no. 474, pp. 254–55
Roger (de) Kyngeford		1360–68	land	C 66/259/27d; E 149/27/17	<i>CPR: Edward III</i> , xi: 1358–1361, 409; <i>CIM</i> , iii: 1348–1377, no. 706, p. 267
Roger Lokquind		1306	crime — murder	JUST 3/106/5d	
Roger Stanlake		1363–99	land	C 54/211/5; C 66/272/25d; C 135/235/13; C 137/19/89; C 145/212/11	<i>CCR: Edward III</i> , xiii: 1369–1374, 526–27; <i>CIPM</i> , xiii: 44–47 <i>Edward III</i> , no. 296, pp. 264–65; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 318, pp. 103–04; <i>CIM</i> , iv: 1377–1388, no. 11, p. 6; <i>CPR: Edward III</i> , xiii: 1364–1367, 202

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Roger Stremel		1302	land	C 260/13/20	
Roger Swein		1203	crime — murder		<i>Select Pleas of the Crown</i> , ed. by Maitland, no. 70, p. 31
Roger Thurl		1232	crime	JUST 1/62/5	
Roger Vaspayl	Roger (de) Waspayle; Rogeri	1278	land	C 60/76/4; KB 27/41/30d	<i>CFR</i> , i: <i>Edward I</i> , 1272–1307, 101
Sarra Karleton		1257	land	C 145/10/26	<i>CIM</i> , i: 1219–1307, no. 2095, p. 562
Savary de Boun		1240	land	C 66/49/12	<i>CPR</i> : <i>Henry III</i> , iii: 1232–1247, 238
Savary de Hauckeswell	Saffredi	1265	land	C 66/83/8	<i>CPR</i> : <i>Henry III</i> , v: 1258–1266, 448
Sergerus (de) Chippenham		1308	crime — theft	JUST 3/103/3	
Simon (le) Vineter		1306	land	C 145/331/12	<i>CIM</i> , ii: 1307–1349, no. 2093, p. 526
Stephen (de) Monte Acuto	Montagu	1300	land	C 133/92/6	<i>CIPM</i> , iii: 20–28 <i>Edward I</i> , no. 550, pp. 423–24
Stephens (le) Pepe		1313	behaviour	JUST 1/383/95d	
Thomas fit[z] Henry (de) Ademanbur		1285	sanctuary	JUST 1/244/1d	
Thomas (de) Ardern		1281	land	C 145/201/14	<i>CIM</i> , iii: 1348–1377, no. 840, pp. 318–19
Thomas Assheman		1394–1400	land	C 136/80/1; C 137/6/34	<i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 295, pp. 131–32; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 85, pp. 30–31

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Thomas atte Wode	Arwood (modern) [TNA index reads: Arwood]	1414–20	land	C 138/44/10; C 139/108/6; E 149/102/7	<i>CIPM</i> , xxi: 6–10 <i>Henry V</i> , nos 396–99, p. 119; <i>CIPM</i> , xx: 1–5 <i>Henry V</i> , no. 275, p. 90
Thomas Ball		1397	land	C 260/108/46	
Thomas Bryan		1317	land	C 60/115/3	<i>CFR</i> , ii: <i>Edward II</i> , 1307–1319, 326
Thomas Bull		1397	land	E 149/68/1	<i>CIM</i> , vi: 1393–1399, no. 168, p. 79
Thomas (de) Cargyntel		1361	land	C 135/143/14	<i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 500, p. 395
Thomas (de la) Corderye		1309–1311	land	C 54/129/22; C 145/69/17	<i>CCR: Edward II</i> , i: 1307–1313, 382; <i>CIM</i> , ii: 1307–1349, no. 47, p. 13
Thomas (de) Cranerhowe		1306	treatment	JUST 1/509/23	
Thomas Dautre	Dautry	1380–94	land	C 136/6/10; C 136/75/7	<i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 163, p. 66; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 161, p. 75
Thomas (de) Erons		1341	crime — murder	JUST 1/858/32 (org 33)	
Thomas Godeelok	Godelok	1319	land	C 134/57/15	<i>CIPM</i> , vi: 10–21 <i>Edward II</i> , no. 73, p. 57
Thomas (de) Grenestede		1342	falsely accused — sane	C 135/63/8; C 135/65/20	<i>CIPM</i> , viii: 10–20 <i>Edward III</i> , no. 340, p. 236, no. 284, p. 209
Thomas Hest	Hert	1288	crime — murder	C 260/4/13b	

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Thomas (del) Hull		1391–1407	land	C 137/57/11; C 145/247/1	<i>CIM</i> , v: 1387–1393, no. 290, p. 168; <i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , no. 183, p. 59
Thomas (de) Lawys	Lowys	1403–09	land	C 137/40/59; C 137/79/40; E 152/433/5	<i>CFR</i> , xii: <i>Henry IV</i> , 1399–1405, 10–11; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 868, p. 299; <i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , no. 752, p. 269
Thomas Markham		1487–8	land	C 66/567/(9d) 18d; C 66/568/(8) 14	<i>CPR</i> : <i>Henry VII</i> , i: 1485–1494, 213, 226
Thomas (de) Ouneby		1362	land	C 60/163/16	<i>CFR</i> , vii: <i>Edward III</i> , 1356–1369, 227
Thomas Phelipp		1413	land		<i>CFR</i> , xiv: <i>Henry V</i> , 1413–1422, 48–49
Thomas Potan		1455	land	C 145/313/4; E 149/183/7	<i>CIM</i> , viii: 1422–1485, no. 201, pp. 121–22
Thomas (le) Potter		1306	crime — murder	JUST 1/422/4	
Thomas Ram		1305/6	crime — murder	JUST 3/106/5d	
Thomas (de) Scorburch		1340	land	C 60/140/24	<i>CFR</i> , v: <i>Edward III</i> , 1337–1347, 171
Thomas Segere		1379–1407	land	C 60/204/12; C 137/30/19; C 137/57/12	<i>CFR</i> , xii: <i>Henry IV</i> , 1399–1405, 53–54; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 579, pp. 189–90; <i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , no. 182, pp. 58–59; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 961, p. 355
Thomas Solariis		1267	land		<i>CPR</i> : <i>Henry III</i> , vi: 1266–1272, 96

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
Thomas (de) Trumpington		1415	Scotland		'Hen. V: Plt Nov. 1415', in <i>PROME</i> , item 6
Thomas Walshe		1439-40	land	C 145/309/1; C 145/309/47	<i>CIM</i> , viii: 1422-1485, no. 130, pp. 78-79
Thomas Wonton	Wouton	1423-28	land	C 60/231/11; C 60/236/14; C 139/35/56	<i>CFR</i> , xv: <i>Henry VI, 1422-1430</i> , 64, 251; <i>CIPM</i> , xxiii: 6-10 <i>Henry VI (1427-1432)</i> , no. 127, p. 75
Thomas (son of Jobis) Wulmer		1306	crime — arson	JUST 3/106/5	
Thomasia Chetewynde		1444	land	C 139/116/36	
Walter Clak		1271	land	JUST 1/365/25d	
Walter (de) Dammelle Daumomedt		1453	land	C 132/6/16	
Walter (de) Iselbeck		1300	land	C 66/120/22	<i>CPR: Edward I</i> , iii: 1292-1301, 501
Walter Makepays	Makepays	1325	crime — murder	C 260/34/29b; C 260/35/9b; C 260/37/5b	
Walter Wraw		1286		C 260/4/1	
Warin Aleyn		1375-99	land	C 54/213/22; C 135/241/1; C 136/67/15; C 145/272/13	<i>CCR: Edward III</i> , xiv: 1374-1377, 156; <i>CIM</i> , vii: 1399-1422, no. 14, p. 9; <i>CIPM</i> , xiv: 48-51 <i>Edward III</i> , no. 85, p. 84; <i>CIPM</i> , xvi: 7-15 <i>Richard II</i> , no. 1039, p. 421
William Astron		1400	land	C 137/33/67	<i>CIPM</i> , xviii: 1-6 <i>Henry IV</i> , no. 682, p. 228

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
William Aylbryth		1368	land	E 149/29/8	<i>CIM</i> , iii: 1348–1377, no. 750, p. 283
William (1e) Bachelet		1324	crime — murder	C 260/36/1b	
William Bartelot		1474	land	C 60/282/2	<i>CFR</i> , xxi: <i>Edward IV, Edward V, Richard III, 1471–1485</i> (1961), no. 211, p. 76
William Belle		1370	crime — murder	C 54/208/4	<i>CCR: Edward III</i> , xiii: 1369–1374, 165
William Bene	Bere	1365	crime — murder	C 66/275/38; C 260/75/37b	<i>CPR: Edward III</i> , xiii: 1364–1367, 373
William Berchaude	Berchot [in. <i>PROME</i>]	1302–35	land	C 60/119/14; C 60/120/25; C 60/131/15; C 60/135/8; C 133/106/17; C 135/44/2	<i>CFR</i> , iii: <i>Edward II, 1319–1327</i> (1913), 34, 64; <i>CFR</i> , iv: <i>Edward III, 1327–1337</i> , 259, 454–55; <i>CIPM</i> , iv: 29–35 <i>Edward</i> , no. 118, pp. 78–79; <i>CIPM</i> , vii: 1–9 <i>Edward III</i> , no. 685, p. 471; 'Ed. I: Plt Summer 1302', 'Appendix', in <i>PROME</i> , item 16
William Brecore	Brekore	1397–1437	land	C 60/201/32; C 136/98/1; C 139/85/12; C 260/133/26	<i>CFR</i> , xi: <i>Richard II, 1391–1399</i> , 223; <i>CFR</i> , xiv: <i>Henry V, 1413–1422</i> , 19, 278, 280, 294–5; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 987, p. 363
William Brewes		1327	land		
William Butteveleyn	Butevylen	1443–1452	land	C 66/457/7; C 139/145/4a	<i>CPR: Henry VI</i> , iv: 1441–1446 (1908), 236
William Clamberge	Clamberk	1290	land		<i>Rotuli parliamentorum</i> , i, 23a, 60a; 'Ed. I: Hilary Plt 1290', in <i>PROME</i> , item 15 (11)

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
William (le) Coner		1286	crime — murder	JUST 1/66/5d	
William de la Ferers		1248	land		<i>The Roll and Writ File of the Berkshire Eyre of 1248</i> , ed. by Clanchy, no. 541, p. 231
William Dransfeld		1491	land	C 66/572/(7) 30	<i>CPR: Henry VII</i> , i: 1485–1494, 368
William Dunton		1436–37	land	C 60/244/23; E 149/159/4	<i>CFR</i> , xvi: <i>Henry VI</i> , 1430–1437, 317; <i>CFR</i> , xviii: <i>Henry VI</i> , 1445–1452, 116, 250; <i>CIM</i> , viii: 1422–1485, no. 91, p. 49
William Eyot	Eyhot	1367–87	land	C 60/168/15; C 66/274/(2) 4; C 135/209/2; C 136/48/22	<i>CFR</i> , vii: <i>Edward III</i> , A.D. 1356–1368 (1923), 353–54; <i>CIPM</i> , vii: 1–9 <i>Edward III</i> , no. 353, p. 256; <i>CIPM</i> , xii: 39–43 <i>Edward III</i> , no. 42, p. 37, no. 344, p. 333; <i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , no. 504, p. 191; <i>CPR: Edward III</i> , xiii: 1364–1367, 354
William Gray		1307	crime — homicide	C 260/17/6b	
William Halybred		1396	land	C 136/89/3	<i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , no. 665, p. 256
William Hemnale		1403–05	land	C 137/45/66; C 137/45/67; C 137/51/58; C 145/280/7	<i>CIM</i> , vii: 1399–1422, no. 208, p. 103; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 1006, p. 349; <i>CIPM</i> , xix: 7–14 <i>Henry IV</i> , by, no. 154, pp. 50–52; <i>CFR</i> , xii: <i>Henry IV</i> , 1399–1405, 249
William Holm		1380–1401	land	C 136/5/4; C 137/21/7	<i>CFR</i> , xii: <i>Henry IV</i> , 1399–1405, 131; <i>CIPM</i> , xv: 1–7 <i>Richard II</i> , no. 115, pp. 44–45; <i>CIPM</i> , xviii: 1–6 <i>Henry IV</i> , no. 345, pp. 110–11

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
William (de) Horthom		1354	land	C 66/242/3d; C 135/129/13	<i>CIPM</i> , x: 26–34 <i>Edward III</i> , no. 206, p. 187; <i>CPR: Edward III</i> , x: 1354–1358, 70
William (de) Irby		1329	land	C 260/21/24	
William Lillebon		1316	land	C 60/114 m 8; C 134/46/19	<i>CFR</i> , ii: <i>Edward II</i> , 1307–1319, 274; <i>CIPM</i> , vi: 1–9 <i>Edward II</i> , no. 568, p. 367
William Maureward		1302–05	falsely accused — sane	C 54/126/17d — (cancelled); C 260/13/6; C 262/5/2	<i>CCR: Edward II</i> , i: 1307–1313, 132
William Mortimer	Mortimer	1373–93	land	C 66/291/19; C 135/232/11; C 135/249/5; C 135/249/6; C 136/72/13; E 149/36/6; E 149/37/9	<i>CFR</i> , xi: <i>Richard II</i> , 1391–1399, 20, 39; <i>CIM</i> , iii: 1348–1377, no. 949, p. 359; <i>CIPM</i> , xiii: 44–47 <i>Edward III</i> , no. 241, pp. 223–24; <i>CIPM</i> , xiv: 48–51 <i>Edward III</i> , nos 153–54, pp. 169–72; <i>CIPM</i> , xvii: 15–23 <i>Richard II</i> , nos 93–95, pp. 42–43; <i>CPR: Edward III</i> , xvi: 1374–1377, 15
William Parker		1493	land	C 66/574/(3d) 19d	<i>CPR: Henry VII</i> , i: 1485–1494, 434
William (de) Passenham		1278–1322	land	C 133/20/9; C 145/89/5 SC 8/5/228	<i>CCR: Edward I</i> , i: 1272–1279, 538; <i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 279, p. 159; <i>CIM</i> , ii: 1307–1349, no. 580, p. 146; <i>CPR: Edward I</i> , i: 1272–1281, 280; <i>Rotuli parliamentorum</i> , i, 395a; ‘Ed. III: Plt March 1336’, in <i>PROME</i>
William Pecok		1491	land	C 66/572/(3) 34	<i>CPR: Henry VII</i> , i: 1485–1494, 364

Name	Alternative	Date	Reason	Primary Source(s) from TNA PRO	Secondary Source(s)
William (de) Percy		1285	land	C 133/42/14	<i>CIPM</i> , ii: 1–19 <i>Edward I</i> , no. 584, pp. 347–48
William Pilche (of Sonky)		1265	crime — murder	C 66/83/22	<i>CPR</i> : <i>Henry III</i> , v: 1258–1266, 407
William Potto		1316	land	SC 9/27/1	
William Roches		1342	land	C 145/147/4	<i>CIM</i> , ii: 1307–1349, no. 1780, pp. 440–41
William Sergeant		1390	land	C 136/64/3	<i>CIPM</i> , xvi: 7–15 <i>Richard II</i> , no. 926, pp. 367–68
William Stoke		1415	land	E 306/9/6	
William Thorp		1479	land	C 140/69/10; E 149/239/12	<i>CIM</i> , viii: 1422–1485, no. 465, p. 250
William Turner		1378	land		<i>Select Cases of Trespass from the King's Court</i> , ed. by Arnold, ii (1987), 390
William (le) Venour		1328	falsely accused — sanc	C 135/14/7	<i>CIPM</i> , vii: 1–9 <i>Edward III</i> , no. 181, p. 148
William Waleys			land	E 149/163/17	<i>CIM</i> , viii: 1422–1485, no. 113, p. 62
William Werenhale		1464	land	E 149/213/11	<i>CIM</i> , viii: 1422–1485, no. 351, pp. 200–01

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- C 60 (Fine Rolls)
- C 66 (Patent Rolls)
- C 132 (Inquisitions post mortem, Henry III)
- C 133 (Inquisitions post mortem, Edward I)
- C 134 (Inquisitions post mortem, Edward II)
- C 135 (Inquisitions post mortem, Edward III)
- C 136 (Inquisitions post mortem, Richard II)
- C 137 (Inquisitions post mortem, Henry IV)
- C 138 (Inquisitions post mortem, Henry V)
- C 139 (Inquisitions post mortem, Henry VI)
- C 140 (Inquisitions post mortem, Edward IV)
- C 141 (Inquisitions post mortem, Richard III)
- C 142 (Inquisitions post mortem & other inquisitions, 1485–1649)
- C 143 (Inquisitions ad quod damnum, Henry III to Richard III)
- C 145 (Miscellaneous Inquisitions)
- C 256 (Various Summonses)
- C 258 (Files, Tower, and Rolls Chapel Series, Certiorari corpus cum causa)
- C 260 (Tower and Rolls Chapel Series, Recorda)
- C 262 (Tower and Rolls Chapel Series, Miscellaneous Certiorari)

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E 101 (Exchequer Accounts Various)

E 149 (Exchequer: King's Remembrancer, Escheators files, Inquisitions post mortem)

E 150 (Exchequer: King's Remembrancer, Escheators files, Inquisitions post mortem)

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 MS Harley 6258B (Herbal, Perididaxeon)
 MS Julius B.viii (*Fleta*)
 MS Royal 12.b.xxv (Medical Tracts and recipes, some science; fourteenth century)
 MS Royal 12. E.viii (Medical Tracts; Latin, thirteenth century)
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